TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 435.

ROBERT M. GREEN, PLAINTIFF IN ERROR,

vs.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 4, 1906.

(20,400.)

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INDEX.

	Original.	Print.
Docket entries	1	1
Writ of error	2	1
Citation and service	3	2
Caption	4	3
Præcipe for summons	5	3
Summons	6	4
Marshal's return	7	4
Proof of service of statement, &c	8	4
Statement of plaintiff's demand	9	5
Rule to plead	11	6
Stipulation as to rule and proofs	12	6
Depositions taken in support of rule to set aside service of writ	14	7
Deposition of Harry E. Heller	14	7
Notary's certificate	25	13
Affidavit of Harry E. Heller	26	14
Affidavit of Robert M. Green	32	16
Opinion of McPherson, J	35	18
Specifications of error	39	20
Petition for writ of error	41	20
Order granting writ of error	43	21

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 6, 1906.

	Original.	Print.
Bond on writ of error	45	22
Judge's certificate as to question of jurisdiction	47	23
Stipulation as to exhibits	48	23
Exhibit A—Card of Harry E. Heller	49	24
B—Letter, Heller to Gardiner, December 30, 1905	50	24
C—Advertisement of Burlington route	51	25
D—Folder of Burlington route	52	26
E—Bill of lading	53	27
F—Letter, secretary of Pennsylvania to Green & Sons, September 18, 1905	55	28
Clerk's certificate to transcript	57	29

1 October Session, 1905.

62.

ROBERT M. GREEN, a Citizen of Pennsylvania, Residing in the Eastern District of Pennsylvania,

vs.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, a Corporation Organized and Doing Business under the Laws of the State of Iowa, and a Citizen Thereof, and which is Doing Business in the State of Pennsylvania and in the Eastern District Thereof, and Has an Office Therein for the Transaction of such Business, With an Agent in Charge Thereof.

John G. Johnson.

Trespass.

1906, February	27.	Præcipe for summons filed.
" "	"	Summons exit returnable first Monday of March next.
" "	"	Statement of claim filed.
" "	"	Rule to plead filed.
March	1.	Proof of service of copy of plaintiff's statement and rule to plead filed.
"	5.	Summons returned served &c.
"	7.	Stipulation of counsel as to appearance for defendant and as to rule on plaintiff to show cause why service of writ and statement should not be vacated. Proceedings to stay &c. &c. (see stipulation on file).
May	4.	Argued sur rule to set aside service &c.
Sept.	7.	Opinion McPherson J. making absolute rule to set aside service of summons.
"	27.	Specifications of error filed.
		Petition and order allowing writ of error.
		Writ of error allowed and copy thereof lodged in Clerk's office for adverse party.
		Bond sur writ of error approved and filed.
		Citation allowed and issued.
		Citation returned service accepted.
	28.	Certificate sur writ of error filed.
	28.	Stipulation of counsel as to exhibits filed.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judge of the Circuit Court of the United States for the Eastern District of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgent of a plea which is in the said Circuit Court, before you,

or some of you between Robert M. Green, Plaintiff, and the Chicago, Burlington and Quincy Railway Company, Defendant, a manifest error hath happened, to the great damage of the said Robert M. Green as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at the City of Washington on the second Monday of October next, in the said United States Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 27th day of September in the year of our Lord one thousand nine hundred and six (1906).

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of the Circuit Court of the United States.

Allowed by the Court.
Attest:
SAMUEL BELL, *Clerk.*

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Chicago, Burlington & Quincy Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a United States Supreme Court to be holden at the City of Washington, D. C., within thirty days, pursuant to a writ of error, filed in the Clerk's Office of the Circuit Court of the United States, Eastern District of Pennsylvania, wherein Robert M. Green, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John B. McPherson, Judge, holding Circuit Court of the United States this 27th day of September, in the year of our Lord one thousand nine hundred and Six (1906).

By the Court,
Attest:

GEORGE BRODBECK, JR.,
Pro. Clerk.

Service accepted.
FRANCIS RAWLE,
Attorney for Defendant in Error.

4 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

No. 62, October Session, 1905.

ROBERT M. GREEN, a Citizen of Pennsylvania, Residing in the Eastern District of Pennsylvania,

vs.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, a Corporation Organized and Doing Business under the Laws of the State of Iowa, and a Citizen Thereof, and which is Doing Business in the State of Pennsylvania and in the Eastern District Thereof, and Has an Office Therein for the Transaction of such Business, With an Agent in Charge Thereof.

Pleas and Proceedings before the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Pennsylvania, in the Third Circuit.

It is thus contained,

Be it remembered that on the Twenty-seventh day of February, A. D. 1906, came the Plaintiff by his counsel, John G. Johnson, Esq., and sued forth a Writ of Summons against the Defendant, which being read, is in the following words and figures, to-wit:—

5 U. S. C. C., Oct. Sess., 1905.

No. 62.

ROBERT M. GREEN, a Citizen of Pennsylvania, Residing in the Eastern District of Pennsylvania,

vs.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY, a Corporation Organized and Doing Business under the Laws of the State of Iowa, and a Citizen Thereof, and which is Doing Business in the State of Pennsylvania and in the Eastern District Thereof, and Has an Office Therein for the Transaction of such Business, With an Agent in Charge Thereof.

Issue summons in trespass against the above named corporation, which is at present doing business within the State of Pennsylvania, and has an office for the transaction of such business at 836 Chestnut Street, Philadelphia, and has at such office an agent for the transaction of its business by the name of Harry E. Heller. Make said summons returnable on the first Monday of March, 1906.

(Signed) JOHN G. JOHNSON,
J. W. B.,
Att'y- for Plaintiff.

2/27/'06.

Endorsed:—No. 62 Oct. Sess. 1905. U. S. Circuit Court. Robert M. Green *vs.* Chicago, Burlington and Quincy Railway Company. Præcipe for Summons. Filed Feb. 27, 1906. Samuel Bell, Clerk. John G. Johnson.

6 UNITED STATES, *Eastern District of Pennsylvania, sct:*

The President of the United States to the marshal of the eastern district of Pennsylvania, Greeting:

We command you, That you summon Chicago, Burlington and Quincy Railway Company, a corporation organized and doing business under the laws of the State of Iowa, and a citizen thereof and which is doing business in the State of Pennsylvania and in the Eastern District thereof and has an office therein for the transaction of such business, with an agent in charge thereof, late of your district if it may be found therein, so that it be and appear before the Judges of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, of the Third Circuit, at a session of the same Court to be holden at Philadelphia, on the first Monday of March next, to answer to Robert M. Green, a citizen of Pennsylvania residing in the Eastern District of Pennsylvania, in a plea of trespass.

And have you then there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this
7 27th day of February, A. D. 1906, and in the 130th year of the independence of the United States.

(Signed) GEORGE BRODBECK, JR.,
[SEAL.] *Pro. Clerk of Circuit Court, U. S.*

Endorsed:—No. 62 October Session, 1905. Circuit Court. Robert M. Green *vs.* Chicago, Burlington and Quincy Railway Company. Summons Trespass. Filed Mar. 5, 1906. Samuel Bell, Clerk. Returnable on the first Monday of March next. John G. Johnson, Attorney for Plaintiff.

Return.

February 28th, 1906. At Philadelphia in my district served the within writ on the Chicago, Burlington and Quincy Railway Company a corporation which is doing business in the Eastern District of Pennsylvania and has an office for the transaction of said business at 836 Chestnut Street Philadelphia, in said district by giving a true and attested copy thereof to Harry E. Heller agent of said corporation at said office on February 28th, A. D. 1906, at 4.20 o'clock P. M. So answers, John B. Robinson, U. S. Marshal,
per Abram B. Myers, Deputy.

8 On the 1st day of March 1906 personally appeared Abram B. Myers, and made oath that in the case of Robert M. Green

vs. Chicago, Burlington and Quincy Railway Company, a Corporation which is doing business in the Eastern District of Pennsylvania and has an office for the transaction of said business at 836 Chestnut Street Philadelphia in said district he served a copy of the plaintiff's statement and rule to plead on Harry E. Heller Agent of said corporation at said office on February 28th, A. D. 1906, at 4.20 o'clock P. M.

(Signed) ABRAM B. MYERS.

Before me
HENRY B. ROBB, *Dep. Clerk.*

Endorsed: No. 62 Oct. Sess. 1905. Circuit Court. Robert M. Green *vs.* Chicago, Burlington and Quincy Railway Company. Proof of service of Plaintiff's Statement. Filed Mar. 1, 1906. Samuel Bell, Clerk.

9 U. S. C. C., E. D. of Pa., Oct. Sess., 1905.

No. 62.

ROBERT M. GREEN
vs.
CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY.

Statement of Plaintiff's Demand.

Plaintiff claims to recover from defendant the sum of One hundred thousand dollars ($100,000.) for injuries suffered by the plaintiff through the negligence of the defendant, as follows:

The plaintiff is a citizen of the State of Pennsylvania and resident in the Eastern District of Pennsylvania, and the defendant is a corporation organized and doing business under the laws of the State of Iowa and a citizen of said State of Iowa, and which is doing business in the State of Pennsylvania and in the Eastern District thereof, and has an office therein and an agent in charge thereof. The defendant operates a line of railroad between Kansas City, Missouri, and Denver, Colorado, and is a common carrier, carrying passengers for hire on its trains between said points. On
10 September 4th, 1905, the plaintiff was a passenger in a car attached to one of the defendant's trains. While the plaintiff was traveling on said train, as a passenger, the defendant negligently allowed another train to come into collision with the train on which the plaintiff was a passenger, as aforesaid, at a point near a station called Brush, in the State of Colorado, whereby the car on which the plaintiff was a passenger was broken, and the plaintiff was crushed, bruised and permanently injured. One of his ribs was fractured, one of his ears was injured so as to impair his hearing, one of his eyes was injured so as to impair his sight, his brain was injured, there was an injury to his breast bone, leg, shoulder

and body, and a severe general shock to his nervous system. In consequence of these injuries, through the negligence of the defendant, the plaintiff has been obliged to spend large sums of money in endeavoring to be healed of his injuries, has suffered great pain, has been unable to attend to his ordinary business, has suffered large pecuniary loss by reason thereof, and has been permanently injured, for which injuries he claims damages in the sum of One hundred thousand dollars ($100,000).

(Signed) ROBERT M. GREEN.

(Signed) JOHN G. JOHNSON,
Per J. W. B.,
Att'y Pro Pl'ff.

11 EASTERN DISTRICT OF PENNA., *ss:*

Robert M. Green, being duly sworn says: I am the plaintiff in the above case. The matters set forth in the foregoing statement of claim, as the basis of plaintiff's demand, are true to the best of my knowledge and belief.

(Signed) ROBERT M. GREEN.

Sworn and subscribed to before me this twenty-fourth day of February, A. D. 1906.

(Signed) LEON A. CANTER,
Notary Public, [SEAL.]
Odd Fellows Temple, Philadelphia, Pennsylvania.

Commission expires February 23, 1909.

Endorsed: No. 62 Oct. Sess. 1905. U. S. Circuit Court. Robert M. Green *vs.* Chicago, Burlington and Quincy Railway Company. Statement of Plaintiff's Claim. Enter rule on defendant to plead in fifteen days or judgment sec. reg. To Clerk U. S. C. C. John G. Johnson, Att'y for Pl'ff. 2/27/06. Filed Feb'y 27, 1906. Samuel Bell, Clerk. John G. Johnson.

12 In the Circuit Court of the United States, Eastern District of Pennsylvania, Oct. Term, 1905.

No. 62.

ROBERT M. GREEN
vs.
CHICAGO, BURLINGTON & QUINCY RY. CO.

Counsel for the plaintiff and counsel appearing specially for the defendant for the purposes of a rule to show cause why the service of the writ should not be vacated, stipulate as follows:—

1. That the clerk shall enter a rule on the plaintiff to show cause why the service of the writ and statement in the above case should not be vacated, all proceedings to stay meantime, returnable sec. reg., with the same force and effect as if the said rule had been duly allowed by the Court.

2. That the depositions taken in the case of Robert M. Green *vs.* Chicago, Burlington & Quincy Railway Company, United States Circuit Court for the Eastern District of Pennsylvania, October Term 1905, No. 38, and the affidavits of Harry E. Heller and Robert M. Green filed therein and the exhibits and stipulations mentioned in the said depositions, may be used in this case to all intents and purposes as if they had been originally made
13 and taken herein.

3. That the appearance of counsel for the defendant shall be considered as a special appearance for the purposes of the said rule only.

(Signed) JOHN G. JOHNSON,
Per F. P. P.,
Counsel for Plaintiff.

(Signed) FRANCIS RAWLE,
Counsel Appearing Specially for Defendant.

Endorsed: 62 Oct. 1905. U. S. C. C. E. D. of Pa. Green *vs.* C. B. & Q. R. Co. Filed Mar. 7, 1906. Samuel Bell, Clerk. Stipulation of counsel as to Rule & proofs.

14 United States Circuit Court, Eastern District of Pennsylvania, October Term, 1905.

No. 38.

ROBERT M. GREEN
vs.
CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY.

Depositions Taken in Support of a Rule to Set Aside the Service of a Writ.

Witness sworn by William Wagner, Jr., Notary Public.

Present: Frank P. Prichard, Esq., for Plaintiff; Francis Rawle, Esq., for Defendant.

It is stipulated that depositions shall be taken stenographically and the signature of witness waived.

Counsel stipulate that the affidavit on which the rule was taken shall be considered as the testimony of Harry E. Heller in chief.

Cross-examination by Mr. PRICHARD:

X Q. 1. The Chicago, Burlington & Quincy Railway Company now operates the lines formerly operated by the Chicago, Burlington & Quincy Railroad Company, does it not?

For pages 9 to 16 see ante.

A. Yes, sir.

X Q. 2. The Chicago, Burlington & Quincy Railroad Company had an office in Philadelphia, had it not?

A. Yes, sir.

X Q 3. And where was that office?

A. At 632 Chestnut Street.

X Q. 4. It registered in the office of the Secretary of the Commonwealth and described you as its Pennsylvania agent, did it not?

A. Not to my knowledge, sir.

X Q. 5. I show you a letter of the Secretary of the Commonwealth, dated Sept. 18, 1905, to Robert M. Green & Sons. Are you able now to say whether the Chicago, Burlington & Quincy registered in the office of the Secretary of the Commonwealth, with you as its agent?

A. No, sir, I am not.

X Q. 6. Where is your office?

A. 836 Chestnut Street.

X Q. 7. Prominently displayed in the front window of that building are the words "Chicago, Burlington & Quincy Railway Company," are there not?

A. Yes, sir.

X Q. 7. Is there anything on that window or in connection with those words which indicates any limitation upon the apparent advertisement of that place as the office of the Chicago, Burlington & Quincy Railway Company?

A. Oh, no, I cannot say there is.

X Q. 8. You have had inserted in the City Directory, have you not, the name of the Chicago, Burlington & Quincy Railway Company, with its location 836 Chestnut Street?

A. We have not had it inserted, the information was asked for.

X Q. 9. It was inserted with your knowledge was it not?

A. Yes sir.

X Q. 10. Does not the name of the Chicago, Burlington & Quincy with the location 836 Chestnut Street, Burlington in the telephone book of the Bell Telephone Company issued for subscribers?

A. Yes, sir, it does.

X Q. 11. I show you a card bearing your name. Is that the card used by you in the business of the Chicago, Burlington & Quincy Railway Company?

A. Yes, sir.

(Card marked for identification "Exhibit A.")

X Q. 12. I show you a letter dated December 30, 1905, apparently addressed by you to Mr. R. L. Gardiner. Was that letter written by you in answer to inquiries relating to the business of the Company on letter paper furnished by the Company for that use?

A. Yes, sir.

(Letter marked for identification "Exhibit B.")

X Q. 13. I show you an advertisement headed "Burlington Route

aver that the Chicago, Burlington and Quincy Railway Company maintains an office with its name prominently printed on a sign, at 836 Chestnut Street, Philadelphia. I aver that cards are printed, bearing the name of the Chicago, Burlington and Quincy Railway Company, with the name of H. E. Heller as District Freight and Passenger Agent, and the location of the office 836 Chestnut Street.

I aver that the said Chicago, Burlington and Quincy Rail-
33 way Company has caused its name to be entered in the regular City directory and in the telephone book of the Bell Telephone Company, with its location as 836 Chestnut Street, Philadelphia; that it has caused to be inserted in the Official Railway Guide a publication, giving offices, time tables, &c. of the various railroads of the country, a location of one of its offices at 836 Chestnut Street, Philadelphia, and the name of Harry E. Heller, as one of its general agents.

I aver that the Chicago, Burlington and Quincy Railway Company publishes, for the information of the public and its patrons, a folder or advertisement, on which it prints as one of the offices of the Company, 836 Chestnut Street, Philadelphia, Pennsylvania, with the name of H. E. Heller as District Freight and Passenger Agent, and I further aver that the said office and agency is maintained for the convenience of the Company, in order that persons having business with the Company may transact such business at said office with said agent. I am advised that at this office the Chicago, Burlington and Quincy Railway Company constantly do business within the State of Pennsylvania.

(Signed) ROB'T M. GREEN.

Sworn to and subscribed before me this sixteenth day of January, 1906.

(Signed) LEON A. CANTER,
Notary Public, [SEAL.]
Odd Fellows Temple, Philadelphia, Pennsylvania.

Commission Expires February 23, 1909.

34 Endorsed: 38 Oct. Term 1905. U. S. C. C. E. D. Penna. Robert M. Green *vs.* The Chicago, Burlington & Quincy Rwy. Co. Sur Rule to show cause why service of writ should not be set aside. Affidavit of Robert M. Green. Filed Jan. 17, 1906. Samuel Bell, Clerk. R. John G. Johnson.

35 United States Circuit Court, Eastern District of Pennsylvania, October Sessions, 1905.

No. 62.

ROBERT M. GREEN
vs.
CHICAGO, BURLINGTON & QUINCY RY. CO.

Rule to show cause why service of summons should not be vacated.

MCPHERSON, *District Judge:*

Without setting out in detail the undisputed facts upon which the plaintiff relies to establish the proposition that the defendant is doing business in the State of Pennsylvania, and was therefore properly served with the writ, I think it is enough to say, that in my opinion these facts do not present a case essentially different from the case that was considered in Earle *vs.* Chesapeake & Ohio R. R. Co., 127 Fed. 235. It was there held that the company was not doing business in this State, and if that case was rightly
36 decided, it seems to me that the present controversy also must be determined in favor of the defendant.

One difference between the two cases remains to be noticed briefly. On May 21, 1900, the Chicago, Burlington & Quincy *Railroad* (not *Railway*) Co. filed in the office of the Secretary of the Commonwealth the statement required by the Pennsylvania Act of April 22, 1874. That statute forbids any foreign corporation to

"Do any business in this commonwealth, until said corporation shall have established an office or offices and appointed an agent or agents for the transaction of its business therein."

Section 2 is as follows:

"It shall not be lawful for any such corporation to do any business in this commonwealth, until it shall have filed in the office of the secretary of the commonwealth a statement, under the seal of said corporation, and signed by the president or secretary thereof, showing the title and object of said corporation, the location of its office or offices, and the name or names of its authorized agent or agents therein; and the certificate of the secretary of the commonwealth, under the seal of the commonwealth, of the filing of such statement, shall be preserved for public inspection by each of said agents in each and every of said offices."

In accordance with the requirements of this act, *the railroad* company filed the statement just referred to, declaring that offices had been established at Philadelphia and at Pittsburgh, and that the agent at Philadelphia was Harry E. Heller. No such statement has ever been filed by the *railway* company defendant, but Mr. Heller testified that he performed the same duties for it as he

had performed for its predecessor, the *railroad* company.
37 Counsel have agreed that the two corporations are different entities, the *railroad* company having been chartered by the State of Illinois, and the *railway* company having been chartered by the state of Iowa; that the former leased its lines for a long term of years to the latter about October 1, 1901, and that the property has since been operated by the defendant. Similar facts did not appear in Earle *v.* Railroad Co., but I do not think that they require the court to reach a different conclusion in the present case. For this there are two reasons, as it seems to me. First; the lease has not been offered in evidence, and I am therefore unable to say how completely the defendant has stepped into the shoes of its lessor. *Prima facie,* registration under the Pennsylvania statute by one corporation could neither bind nor protect another corporation, without sufficient proof—and perhaps not even then—that the two were substantially identical, or that the latter had assumed the obligations of the former in this respect. For all that appears, the defendant may be maintaining its office and agency in Philadelphia without any reference to the statement filed by the railroad company under the Act of 1874, and in violation of the statutory provisions.

The second reason is to be found in the decisions of the supreme court of Pennsylvania that are referred to upon the brief of defendant's counsel. I regret to be unable to discuss them
38 more fully, and to be obliged to confine myself to announcing that I agree with the position that under these decisions the defendant is not "doing business" in Pennsylvania, and is not, therefore, constructively within the state, and amenable to process therein.

It follows that the writ of summons was not lawfully served, and that the service must be set aside.

The rule is accordingly made absolute.

Endorsed: 62 Oct. Sess. 1905. U. S. C. C. E. D. of Pa. Green *vs.* Chicago, Burlington & Quincy R. R. Co. Opinion sur Rule to show cause why service of summons should not be set aside. Filed Sept. 7, 1906. Samuel Bell, Clerk.

39 In the Circuit Court of the United States for the Eastern District of Pennsylvania, October Term, 1905.

No. 62.

ROBERT M. GREEN
vs.
CHICAGO, BURLINGTON & QUINCY RAILWAY CO.

In Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

To October Sessions, 1905. No. 62.

Specifications of Error.

1. The Learned Circuit Court erred in making absolute the rule to show cause why the service of summons should not be vacated.
2. The Learned Circuit Court erred in not discharging the rule to show cause why the service of summons should not be vacated.
3. The Learned Circuit Court erred in holding that the writ of Summons was not lawfully served and that service must be set aside.
4. The Learned Circuit Court erred in not holding that the Writ of Summons was lawfully served.

JOHN G. JOHNSON,
Per MAURICE B. SAUL,
Attorney for Appellant.

Philadelphia, September 27, 1906.

40 Endorsed: No. 62 Oct. Sess. 1905. U. S. C. C. Green, Plaintiff in Error, *vs.* C. B. and Q. Ry. Co. Defendant in Error. Specifications of Error. Filed Sept. 27, 1906. Samuel Bell, Clerk. John G. Johnson, Att'y for Pl'ff in Error.

41 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

October Sessions, 1905. No. 62.

ROBERT M. GREEN
vs.
CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY.

Petition for Writ of Error.

Robert M. Green, the plaintiff in the above entitled cause, being aggrieved by the final judgment made and entered by the Court in the above entitled cause on the 7th day of September 1906, whereby it was adjudged that the writ of summons in the above case was not lawfully served upon the defendant corporation and that the service

thereof must be set aside, and whereby the jurisdiction of the said Court is drawn into question; representing to the Court that the question involved is of such importance as to require a review of such decision by the Supreme Court of the United States, comes now by his attorney John G. Johnson and petitions the Court for an order allowing the said plaintiff to prosecute a writ of error from said judgment to the Supreme Court of the United States in accordance with the laws of the United States in that behalf made and
42 provided; and also, that an order be made fixing the amount of security which plaintiff shall furnish upon such a writ of error; and that upon giving such security all further proceedings in this Court shall be stayed until the determination of said writ of error by the said Supreme Court of the United States.

And your Petitioner will ever pray etc.

JOHN G. JOHNSON,
Per MAURICE B. SAUL,
Attorney for Petitioner.

September 27, 1906.

43 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

October Sessions, 1905. No. 62.

ROBERT M. GREEN
vs.
CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY.

Order.

Before McPherson, J.

And now, September 27, 1906, upon consideration of the foregoing petition and on motion of John G. Johnson, attorney for the petitioner the Court being of the opinion that the question involved in the above entitled cause is of such importance as to require a review of the decision entered therein September 7, 1906, by the Supreme Court of the United States, it is ordered and decreed that a Writ of Error to the Supreme Court of the United States from the final judgment heretofore filed and entered as aforesaid in the above entitled cause be and the same is hereby allowed, and that a certified transcript of the Record and of the proceedings herein be forthwith transmitted to the said Court.

It is further ordered that the Bond for damages and costs on said Writ of Error be and the same is hereby fixed at $250.00.

By the Court,
Attest: GEORGE BRODBECK, JR.,
Pro Clerk.

44 Endorsed:—No. 62 Oct. Sessions 1905. U. S. C. C. Green *vs.* C. B. and Q. Ry. Co. Petition for Writ of Error. Order annexed. Filed Sept. 27, 1906. Samuel Bell, Clerk. John G. Johnson, Att'y for Pl'ff.

45 Know all men by these presents, That we Robert M. Green of Philadelphia, Pennsylvania, and The United States Fidelity and Guaranty Company of Baltimore, Maryland, as sureties, are held and firmly bound unto Chicago, Burlington & Quincy Railway Company in the full and just sum of Two hundred and fifty $250.00 dollars to be paid to the said Chicago, Burlington & Quincy Railway Co., its certain attorney, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of September in the year of our Lord one thousand nine hundred and six.

Whereas, lately at a session of the U. S. Circuit Court of the Eastern District of Pennsylvania, Oct. Sessions, 1905, No. 62, in a suit depending in said Court between Robert M. Green and Chicago, Burlington & Quincy Railway Co., an order was rendered against the said Robert M. Green, making absolute a rule to show cause why the service of Summons on said Defendant should not be vacated, and the said Robert M. Green having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the said order in the aforesaid suit, and a citation directed to the said Chicago, Burlington & Quincy Railroad Company citing and admonishing it to be and appear at a Supreme Court of
46 the United States to be holden at the city of Washington, within thirty days.

Now, the condition of the above obligation is such, That if the said Robert M. Green shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

The Surety waives the signature of the principal herein.

THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By HENRY STROUSE, [SEAL.]
Resident Vice President.

Attest:
FRANK M. FLYNN, *Resident Secretary.*

Sealed and delivered in the presence of—
JOHN J. McCAFFREY.

Approved by the Court.
Attest:
GEORGE BRODBECK, JR., *Pro Clerk.*

Sept. 27, 1906.

Endorsed:—No. 62 Oct. Sess. 1905. U. S. C. C. E. D. of Penna. Robert M. Green *vs.* Chicago, Burlington & Quincy Rwy. Co. Bond sur Writ of Error. Filed Sep. 27, 1906. Samuel Bell, Clerk.

47 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

October Sessions, 1905. No. 62.

ROBERT M. GREEN
vs.
CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY.

Certificate Sur Writ of Error.

To the Supreme Court of the United States:

I certify that the question involved in the decision in the above Court from which a Writ of Error is being prosecuted by the above plaintiff concerns the jurisdiction of the United States Court for the Eastern District of Pennsylvania, namely, whether the United States Circuit Court for the Eastern District of Pennsylvania acquired jurisdiction of the defendant corporation by service of the Writ of Summons upon its agent in the Eastern District of Pennsylvania.

JOHN B. McPHERSON,
Judge of the Circuit Court for the Eastern District of Pennsylvania.

Endorsed:—No. 62 Oct. Sessions 1905. Green *vs.* C. B. & Q. R'y Co. Certificate sur Writ of Error to the United States Supreme Court. Filed Sep. 28, 1906. Samuel Bell, Clerk. John G. Johnson.

48 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

October Sessions, 1905. No. 62.

ROBERT M. GREEN
vs.
CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY.

It is hereby stipulated and agreed between John G. Johnson, Attorney for Robert M. Green, the above named plaintiff, and Frances Rawle, Attorney for the Chicago, Burlington & Quincy Railway Company, the above named defendant, that the following papers, marked Exhibit "A," "B," "C," "D," "E" and "F," shall constitute the Exhibits mentioned and referred to in the deposition of Harry E. Heller taken in pursuance of a rule to show cause why service of the Writ of Summons in the above case should not be set aside, which deposition is now upon record in the above case.

JOHN G. JOHNSON,
By MAURICE B. SAUL,
Attorney- for Plaintiff.
FRANCIS RAWLE,
Attorney for Defendant.

Sept. 28. 1906.

49

EXHIBIT "A."

Chicago, Burlington & Quincy Ry. Co.

Burlington Route.

HARRY E. HELLER,
District Freight and Passenger Agent, 836 Chestnut Street, Philadelphia, Pa.

Phone, Walnut 346.

50

EXHIBIT "B."

Burlington Route.

Chicago, Burlington & Quincy Railway Company.

Office of District Freight and Passenger Agent, 836 Chestnut Street, Philadelphia, Pa.

Telephone Walnut, 346.

Harry E. Heller, Dist. Fr't and Pass. Agent; B. C. Cloud, Traveling Freight Agent; R. E. Wheeler, Traveling Passenger Agent; F. G. Heft, City Sol., Fr't & Pass. Agent.

In your reply please refer to file: 7214.

PHILADELPHIA, *Dec.* 30, 1905.

Mr. R. L. Gardiner, 3823 Baring St., Philada., Pa.

DEAR SIR: Your postal of the 30th. has just been received and noted. We can furnish you with ticket or an order for ticket at this office, reading from Chicago to Denver. The present rate from Chicago to Denver is $29.50. We also have a round trip ticket on sale from Chicago to Denver, Colorado Springs or Pueblo, Colo., at rate of $47.20, good for return up to and including May 31st.

I hand you herewith one of our folders and will be very glad indeed to make all arrangements for your Brother's trip, and if you desire I will have our representative call on you.

Yours truly,

HARRY E. HELLER.

HEH–JMW

EXHIBIT "C"

25

46

Burlington Route

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY

GENERAL AGENTS AND TRAVELING PASSENGER AND FREIGHT AGENTS.

Atchison, Kan.—J. H. JARRETT, Gen. Agent.

Atlanta, Ga.—5 North Pryor Street—
J. N. MERRILL, General Southern Agent.
E. A. GROVES, Trav. Freight and Pas. Agent.
C. W. ROBINSON, Trav. Pas. and Freight Agt.
CHAS. PAYTON, Trav. Freight & Pas. Agent.

Beatrice, Neb.—
H. L. LEWIS, Div. Fht. and Pas. Agent.

Billings, Mont.—F. W. KLIPPEL, Gen. Agent.
H. A. BRANT, Traveling Freight Agent.

Boston, Mass.—201 Washington Street—
W. J. O'MEARA, East. Pas. Agent.
WM. GARTY, New England Freight Agent.
ALEX. STOCKS, City Pas. and Tkt. Agt.
H. R. HOUGHTON, Traveling Passenger Agent.
B. N. STOWER, Traveling Passenger Agent.

Buffalo, N.Y.—952 Main Street—
W. D. CORNELL, Traveling Passenger Agent.

Burlington, Ia.—
W. H. HILL, Division Freight Agent.
J. C. JOHNSON, Traveling Freight Agent.
H. S. JONES, Division Passenger Agent.

Butte, Mont.—45 West Broadway—
H. F. RUGER, Freight and Passenger Agent.

Chicago, Ill.—211 Clark Street—
F. E. BELL, City Passenger Agent.
C. A. JOHNSON, Commercial Agent.
W. B. BYRNE, Depot Passenger Agent, Union Depot, Canal and Adams Sts.
J. D. BAKER, Traveling Passenger Agent.
J. R. VAN DYKE, Traveling Passenger Agent.
E. H. SMITH, Traveling Freight Agent.
F. K. KELLY, Traveling Freight Agent.
B. F. TROXELL, Traveling Freight Agent.
E. A. TUTTLE, Division Freight Agent.

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WM. AUSTIN, General Agent.
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H. K. MILES, Traveling Freight Agent.

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W. F. MCMILLAN, General Agent.
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E. P. SWAN, Traveling Freight Agent.

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Council Bluffs, Ia.—
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J. E. SWAN, City Passenger Agent.

Dallas, Tex.—909 Scollard Building—
C. W. ANDREWS, Texas Freight and Pas. Agt.
H. O. BYRD, Traveling Freight Agent.

Davenport, Ia.—305 Brady Street—
M. J. YOUNG, Commercial Agent.

Deadwood, S.D.—J. L. BENTLEY, Com'l Agent.

Denver, Colo.—1039 17th Street—
J. F. VALLERY, General Agent.
F. C. MATTHEWS, Traveling Passenger Agent.
A. E. CAMPBELL, Traveling Passenger Agent.
C. W. ANDERSON, City Passenger Agent.

Des Moines, Ia.—400 Locust Street—
W. G. WAGNER, Commercial Agent.
J. J. TREITER, City Passenger Agent.

Dubuque, Ia.—H. W. UTTLEY, General Agent.
H. W. THEIS, City Pas. and Ticket Agt.

Galesburg, Ill.—A. S. CRAWFORD, Dist. Pas. Agt.
A. L. WEST, Division Freight Agent.

Hannibal, Mo.—F. E. HOLLINGSHEAD, Gen. Agt.
M. L. FREIGHT, Trav. Fht. & Pas. Agt.

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Kansas City, Mo.—823 North Main Street—
J. D. MCNAMARA, Southwestern Pas. Agent.
H. L. HARMON, General Southwestern Agent.
C. B. OGLE, Traveling Passenger Agent.
A. D. BROWN, Traveling Passenger Agent.
JOHN C. WRIGHT, Pas. Agent., Union Depot.
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G. H. GRAY, Traveling Freight Agent.

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Leavenworth, Kan.—
ELLIOT MARSHALL, General Agent.

Lincoln, Neb.—13th and O Streets—
G. W. BONNELL, City Pas. and Ticket Agent.

Los Angeles, Cal.—222 South Spring Street—
W. W. ELLIOTT, Freight and Passenger Agent.
T. W. MONAHAN, Traveling Passenger Agent.
C. H. EATON, Traveling Passenger Agent.

Minneapolis, Minn.—3d St. and Nicollet Ave.
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JOHN A. PARKER, General Agent.

New York City.—379 Broadway—
E. J. SWORDS, General Eastern Agent.
W. J. O'MEARA, Eastern Passenger Agent.
W. J. BERGEN, City Passenger Agent.
M. K. MIX, Traveling Passenger Agent.

Omaha, Neb.—
J. B. REYNOLDS, City Pas. Agt., 1302 Farnam St.
1204 Farnam Street—
J. W. WILLIAMS, Traveling Passenger Agent.
L. M. WHITEHEAD, Trav. Passenger Agent.

Peoria, Ill.—323 Main Street—
L. PAGE, General Agent.
T. L. BURKETT, City Passenger Agent.
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Philadelphia, Pa.—836 Chestnut Street—
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R. E. WHEELER, Traveling Passenger Agent.
B. C. CLOUD, Traveling Freight Agent.

Pittsburgh, Pa.—703 Park Building.
W. V. TAPPEN, Gen. Agt., 703 Park Building.
J. B. DRAKE, Traveling Passenger Agent.

Portland, Ore.—220 Third Street—
A. C. SHELDON, General Agent.

Pueblo, Colo.—C. J. PEARSON, Com'l Agent.

Quincy, Ill.—E. F. BRADFORD, General Agent.

Rockford, Ill.—A. G. EVERETT, Gen. Agent.

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H. W. CRAWFORD, Division Freight Agent.
FRANK A. HART, Passenger Agent.

St. Joseph, Mo.—N. W. cor. 6th and Felix Sts.
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A. E. MARTIN, City Passenger Agent.
J. R. MCKILLIP, Live Stock Agent.
H. M. HALL, Traveling Freight Agent.

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J. G. DELAPLAINE, City Passenger Agent, S. W. cor. Broadway and Olive Street.
C. E. MICHEL, Trav. Pas. Agt., 604 Pine Street.
C. J. ROWETT, Trav. Pas. Agt., 604 Pine Street.
JAMES B. SECHLER, Pas. Agt., Union Station.
H. R. TODD, General Agent, Room 201, Chemical Building, 8th and Olive Streets.
R. J. TOZER, Traveling Freight Agent.

St. Paul, Minn.—
F. M. RUGG, Northwestern Passenger Agent, Germania Life Building.
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CHARLES THOMPSON, Special Pas. Agent.
GEO. W. MCCASKEY, City Ticket Agent, Fifth and Robert Streets.
JNO. R. HAWLEY, Traveling Freight Agent.
FRANK T. LALLY, Trav. Passenger Agent, Germania Life Building.

Salt Lake City, Utah—R. F. NESBEN, Gen. Agt. 70 West, Second South Street.

San Francisco, Cal.—631 Market Street—
W. D. SANBORN, General Agent.

San Jose, Cal.—15 West Santa Clara Street—
F. E. THOMPSON, Ticket Agent.

Seattle, Wash.—103 Pioneer Square—
M. P. BENTON, Agent.

Spokane, Wash.—803 Riverside Avenue—
A. B. JACKSON, Trav. Freight and Pas. Agent.

Sterling, Ill.—L. C. THORNE, General Agent.

Tacoma, Wash.—119 South Tenth Street—
F. G. DONALDSON, Freight and Passenger Agt.

Toronto, Ont.—10 King Street East—
J. A. YORICK, Canadian Pas. and Fht. Agt.

Walla Walla, Wash.—4 Second Street—
R. B. WILSON, Traveling Fht. and Pas. Agent.

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Greybull
Basin
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Worland
Shoshoni
Casper
Lander
Rawlins
Walcott Ju.
Green River
Evanston
Granger
Ogden
Salt Lake City
Provo
Helper
Grand Junction
Glenwood Springs
Leadville
Pueblo
Trinidad
Las Animas
Rocky Ford
La Junta
Dodge City
Hutchinson
Newton
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Burlington
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Ottumwa
Centerville
Creston
Red Oak
Shenandoah
Hamburg
Nebraska Ju.

Phone, Walnut 346. *Chestnut Street, Philadelphia, Pa.*

EXHIBIT "B."

Burlington Route.

Chicago, Burlington & Quincy Railway Company.

ice of District Freight and Passenger Agent, 836 Chestnut Street, Philadelphia, Pa.

Telephone Walnut, 346.

rry E. Heller, Dist. Fr't and Pass. Agent; B. C. Cloud, Traveling reight Agent; R. E. Wheeler, Traveling Passenger Agent; F. G. eft, City Sol., Fr't & Pass. Agent.

n your reply please refer to file: 7214.

PHILADELPHIA, *Dec.* 30, 1905.

R. L. Gardiner, 3823 Baring St., Philada., Pa.

EAR SIR: Your postal of the 30th. has just been received and d. We can furnish you with ticket or an order for ticket at this e, reading from Chicago to Denver. The present rate from ago to Denver is $29.50. We also have a round trip ticket on from Chicago to Denver, Colorado Springs or Pueblo, Colo., at of $47.20, good for return up to and including May 31st. hand you herewith one of our folders and will be very glad d to make all arrangements for your Brother's trip, and if you e I will have our representative call on you.

Yours truly,

HARRY E. HELLER.

EH–JMW

GENERAL AGENTS AND TRAVELING PASSENGER AND FREIGHT AGENTS.

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Chas. Patton Trav. Freight & Pas. Agent.

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Alex. Stocks, City Pas. and Tkt. Agt.
H. R. Houghton, Traveling Passenger Agent.
B. N. Stones, Traveling Passenger Agent.

Buffalo, N.Y.—299 Main Street—
W. D. Cornell, Traveling Passenger Agent.

Burlington, Ia.—
W. H. Hill, Division Freight Agent.
J. C. Johnson, Traveling Freight Agent.
H. S. Jones, Division Passenger Agent.

Butte, Mont.—15 West Broadway—
H. F. Rugee, Freight and Passenger Agent.

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C. A. Johnson, Commercial Agent.
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J. R. Van Dyke, Traveling Passenger Agent.
E. H. Smith, Traveling Freight Agent.
F. K. Kelly, Traveling Freight Agent.
B. F. Troxell, Traveling Freight Agent.
E. A. Tuttle, Division Freight Agent.

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W. M. Shaw, District Passenger Agent.
Wm. Austin, General Agent.
F. L. Gannaway, Traveling Passenger Agent.
H. K. Miles, Traveling Freight Agent.

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E. P. Swan, Traveling Freight Agent.

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J. E. Swan, City Passenger Agent.

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H. O. Byrd, Traveling Freight Agent.

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Deadwood, S.D.—J. L. Bentley, Com'l Agent.

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F. C. Matthews, Traveling Passenger Agent.
A. E. Campbell, Traveling Passenger Agent.
C. W. Anderson, City Passenger Agent.

Des Moines, Ia.—400 Locust Street—
W. G. Wagner, Commercial Agent.
J. J. Teeter, City Passenger Agent.

Dubuque, Ia.—H. W. Uttley, General Agent.
H. W. Turn, City Pas. and Ticket Agt.

Galesburg, Ill.—A. S. Crawford, Div. Pas. Agt.
A. L. West, Division Freight Agent.

Hannibal, Mo.—F. E. Hollingshead, Gen. Agt.
M. L. Enright, Trav. Fht. & Pas. Agt.

Jacksonville, Ill.—
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H. L. Harmon, General Southwestern Agent.
C. B. Ogle, Traveling Passenger Agent.
A. D. Brown, Traveling Passenger Agent.
John C. Wright, Pas. Agent., Union Depot.
W. L. Kendrick, Live Stock Agent.
G. H. Gray, Traveling Freight Agent.

Keokuk, Ia.—J. A. Somerville, Gen. Agent.
J. W. Hood, Traveling Fht. and Pas. Agt.

Leavenworth, Kan.—
Elliot Marshall, General Agent.

Lincoln, Neb.—13th and O Streets—
G. W. Bonnell, City Pas. and Ticket Agent.

Los Angeles, Cal.—222 South Spring Street—
W. W. Elliott, Freight and Passenger Agent.
J. W. Monahan, Traveling Passenger Agent.
C. H. Eaton, Traveling Passenger Agent.

Minneapolis, Minn.—20 St. and Nicollet Ave.
J. F. McElroy, City Passenger Agent.
John A. Parker, General Agent.

New York City.—379 Broadway—
E. J. Swords, General Eastern Agent.
W. J. O'Meara, Eastern Passenger Agent.
W. J. Berger, City Passenger Agent.
M. K. Mix, Traveling Passenger Agent.

Omaha, Neb.—
J. B. Reynolds, City Pas. Agt., 1302 Farnam St.
1004 Farnam Street—
J. W. Williams, Traveling Passenger Agent.
L. M. Whitehead, Trav. Passenger Agent.

Peoria, Ill.—323 Main Street—
L. Page, General Agent.
T. L. Birkett, City Passenger Agent.
E. L. Wright, Traveling Passenger Agent.

Philadelphia, Pa.—826 Chestnut Street—
Harry E. Heller, Dist. Fht. and Pas. Agt.
R. F. Wheeler, Traveling Passenger Agent.
B. C. Cloud, Traveling Freight Agent.

Pittsburgh, Pa.—703 Park Building.
W. V. Taffner, Gen. Agt., 702 Park Building.
J. B. Drake, Traveling Passenger Agent.

Portland, Ore.—200 Third Street—
A. C. Sheldon, General Agent.

Pueblo, Colo.—C. J. Pearson, Com'l Agent.

Quincy, Ill.—J. T. Bradford, General Agent.

Rockford, Ill.—A. G. Everett, Gen. Agent.

Rock Island, Ill.—
H. W. Crawford, Division Freight Agent.
Frank A. Hart, Passenger Agent.

St. Joseph, Mo.—N. W. cor. 6th and Felix Sts.
E. H. Crosier, Division Passenger Agent.
A. E. Martin, City Passenger Agent.
J. R. McKillip, Live Stock Agent.
H. M. Hall, Traveling Freight Agent.

St. Louis, Mo.—
J. G. Delaplaine, City Passenger Agent, S.W. cor. Broadway and Olive Street.
C. E. Michel, Trav. Pas. Agt., 604 Pine Street.
C. J. Rohwitt, Trav. Pas. Agt., 604 Pine Street.
James B. Sechler, Pas. Agt., Union Station.
H. R. Todd, General Agent,
Room 703, Chemical Building, 7th and Olive Streets.
R. J. Toler, Traveling Freight Agent.

St. Paul, Minn.—
F. M. Rugg, Northwestern Passenger Agent, Germania Life Building.
F. R. Thomas, City Passenger Agent.
Charles Thompson, Special Pas. Agent.
Geo. W. McCaskey, City Ticket Agent. Fifth and Robert Streets.
Jno. R. Hawley, Traveling Freight Agent.
Frank T. Lally, Trav. Passenger Agent, Germania Life Building.

Salt Lake City, Utah—R. F. Nelsen, Gen. Agt., 79 West, Second South Street.

San Francisco, Cal.—631 Market Street—
W. D. Sanborn, General Agent.

San Jose, Cal.—13 West Santa Clara Street—
F. E. Thompson, Ticket Agent.

Seattle, Wash.—103 Pioneer Square—
M. P. Benton, Agent.

Spokane, Wash.—603 Riverside Avenue—
A. B. Jackson, Trav. Freight and Pas. Agent.

Sterling, Ill.—L. C. Thorne, General Agent.

Tacoma, Wash.—113 South Tenth Street—
F. G. Donaldson, Freight and Passenger Agt.

Toronto, Ont.—10 King Street East—
J. A. Yonicy, Canadian Pas. and Fht. Agt.

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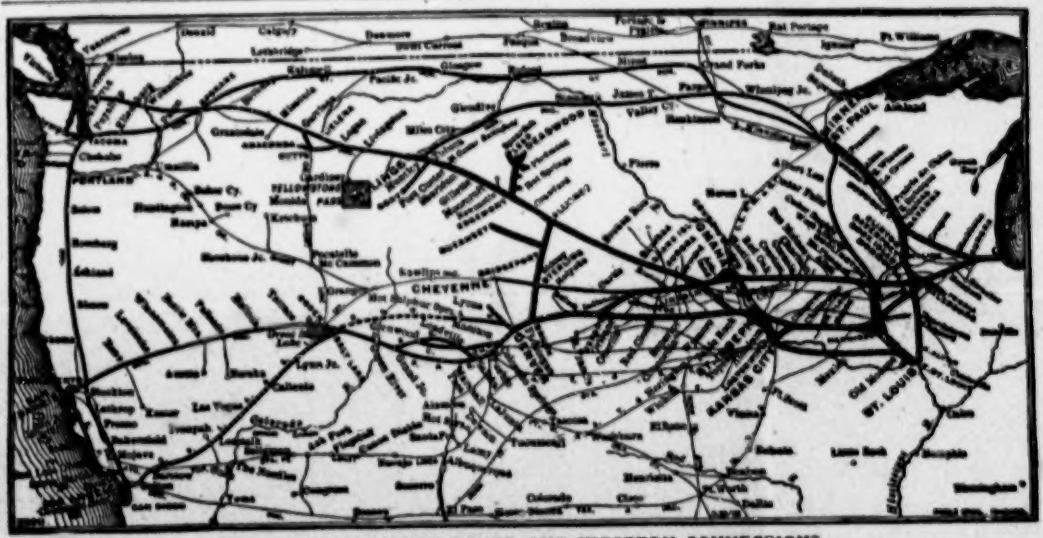
R. B. Wilson, Traveling Fht. and Pas. Agent.



MAP OF BURLINGTON ROUTE AND WESTERN CONNECTIONS.

EXHIBIT "D".

GENERAL INDEX.

	PAGE
Burlington Route Publications	37
Burlington Route Stations	1-2
Colorado Branch Lines	33
Connections at Chicago, Peoria, St. Louis.	36
Connections at Denver, Salt Lake City, Kansas City and Omaha	35
Illinois Branch Lines	25-26
Iowa Branch Lines	27
Iowa and Missouri Branch Lines	28-29
Kansas Branch Lines	30-31
Local Time—Chicago, Omaha and Denver	13-14
" " Omaha, Lincoln and Denver	15
" " Chicago, St. Paul and Minneapolis	21
" " St. Louis, Rock Island, St. Paul and Minneapolis	22
" " St. Louis, Burlington, St. Paul and Minneapolis	23
" " St. Louis and Kansas City	16
" " Chicago, Atchison, Leavenworth, St. Joseph and Kansas City	17
" " Kansas City, St. Joseph, Council Bluffs and Omaha	24
Local Time—Kansas City, St. Joseph and Denver	18
" " St. Louis, Kansas City, Leavenworth, Atchison, St. Joseph, Chicago, Omaha, Lincoln, Denver and Hot Springs, Deadwood and Billings	32
Map of Burlington Route and Connecting Lines	19-20
Map of Burlington Route and Pacific Coast Connections	3
Nebraska Branch Lines	30-31
Sleeping Car Rates	34
South Dakota Branch Lines	33
Through Car Service	5-6
To the Orient	12
To and from the Pacific Coast—	
Via St. Paul	7
Via Denver and Ogden	9
Via Denver and Salt Lake City	10
Via Billings	8
To and from the Northwest via St. Paul	11
Tourist Car Service	10
Wyoming Branch Lines	33

REPRESENTATIVES OF THE BURLINGTON ROUTE.

J. FRANCIS, . . . **General Passenger Agent, Chicago, Ill.**
L. W. WAKELEY, . . **General Passenger Agent, Omaha, Neb.**
W. A. LALOR, . . . **Asst. Gen. Passenger Agent, St. Louis, Mo.**
P. S. EUSTIS, Passenger Traffic Manager.

Atchison, Kan., Second and Main Sts., . . . J. H. JARRETT, Gen'l Agent
Atlanta, Ga., 5 North Pryor St., . . J. N. MERRILL, Gen'l Southern Agent
Billings, Mont., ... F. W. KLIPPEL, Gen'l Agent
Boston, Mass., 201 Washington St., { W. J. O'MEARA, Eastern Passenger Agt. / H. R. HOUGHTON, Trav. Pass'r Agt. / B. N. STONER, Trav. Pass'r Agent }
Buffalo, N. Y., 299 Main St. . . W. D. CORNELL, Traveling Passenger Agent
Burlington, Ia., C., B. & Q. Depot, ... H. S. JONES, Div. Pass'r Agent
Butte, Mont., 15 West Broadway, . . . H. F. RUGER, Frt. and Pass'r Agent
Chicago, Ill., 211 Clark St., ... F. E. BELL, City Passenger Agent
Chicago, Ill., Cor. Adams and Canal Sts., . W. B. BIRNS, Depot Pass'r Agt.
Chicago, Ill., Headquarters Building, Cor. Adams and Franklin Sts., { J. R. VAN DYKE, Trav. Pass'r Agent / J. D. BAKER, Trav. Passenger Agent }
Cincinnati, O., 436 Vine St., ... { W. M. SHAW, Dist. Passenger Agent / F. L. GANNAWAY, Trav. Pass'r Agent }
Cleveland, O., Williamson Bldg., 7 Public Sq., { W. F. McMILLAN, Gen'l Agt. / C. A. BROWNE, Pass'r Agt. }
Clinton, Ia., ... J. M. RODMAN, General Agent
Council Bluffs, Ia., ... J. E. SWAN, City Passenger Agent
Dallas, Tex., 309 Scollard Bldg., C. W. ANDREWS, Texas Frt. & Pass'r Agent
Davenport, Ia., 305 Brady St., ... M. J. YOUNG, Commercial Agent
Deadwood, S. D., ... J. L. BENTLEY, Commercial Agent
Denver, Colo., 1039 Seventeenth St., . . . J. F. VALLERY, General Agent
Des Moines, Ia., 400 Locust St. . . . . J. J. TESTER, City Pass'r Agent
Minneapolis, Minn., 3d St. and Nicollet Ave., J. F. McELROY, City Pass'r Agt
New York, N. Y., 379 Broadway, { W. J. O'MEARA, Eastern Passenger Agent / W. J. BERDEN, City Passenger Agent / M. R. MIX, Traveling Passenger Agent }
Omaha, Neb., 1502 Farnam St., . . . J. B. REYNOLDS, City Passenger Agent
Omaha, Neb., 1004 Farnam St., { J. W. WILLIAMS, Traveling Pass'r Agent / L. M. WHITEHEAD, Traveling Pass'r Agent }
Peoria, Ill., 333 Main St. . . . { L. PAGE, General Agent / T. L. BURNETT, City Passenger Agent / E. L. WRIGHT, Traveling Passenger Agent }
Philadelphia Pa., 836 Chestnut St., { H. E. HELLER, Dist. Frt. & Pass'r Agent / R. E. WHEELER, Trav. Pass'r Agt. }
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	PAGE
Burlington Route Publications	37
Burlington Route Stations	1-2
Colorado Branch Lines	33
Connections at Chicago, Peoria, St. Louis.	36
Connections at Denver, Salt Lake City, Kansas City and Omaha	35
Illinois Branch Lines	25-26
Iowa Branch Lines	27
Iowa and Missouri Branch Lines	28-29
Kansas Branch Lines	30-31
Local Time—Chicago, Omaha and Denver	13-14
" " Omaha, Lincoln and Denver	15
" " Chicago, St. Paul and Minneapolis	21
" " St. Louis, Rock Island, St. Paul and Minneapolis	22
" " St. Louis, Burlington, St. Paul and Minneapolis	23
" " St. Louis and Kansas City	16
" " Chicago, Atchison, Leavenworth, St. Joseph and Kansas City	17
" " Kansas City, St. Joseph, Council Bluffs and Omaha	24
Local Time—Kansas City, St. Joseph and Denver	18
" " St. Louis, Kansas City, Leavenworth, Atchison, St. Joseph, Chicago, Omaha, Lincoln, Denver and Hot Springs, Deadwood and Billings	32
Map of Burlington Route and Connecting Lines	19-20
Map of Burlington Route and Pacific Coast Connections	3
Nebraska Branch Lines	30-31
Sleeping Car Rates	34
South Dakota Branch Lines	33
Through Car Service	5-6
To the Orient	12
To and from the Pacific Coast—	
Via St. Paul	7
Via Denver and Ogden	9
Via Denver and Salt Lake City	10
Via Billings	8
To and from the Northwest via St. Paul	11
Tourist Car Service	10
Wyoming Branch Lines	33

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Spokane, Wash., 605 Riverside Ave., A. B. JACKSON, Traveling Pass'r Agent
Sterling, Ill., L. C. THORNE, General Agent
Tacoma, Wash., 113 S. Tenth St., F. G. DONALDSON, Freight and Pass'r Agent
Toronto, Ont., 10 King Street East, J. A. TORICK, Canadian Pass'r & Frt. Agt.
Walla Walla, Wash., No. 4 Second St., R. B. WILSON, Trav. Frt. & Pass'r Agt.

53 EXHIBIT "E."

Burlington Route.

Chicago, Burlington & Quincy Railway Company.

Bill of Lading.

—— —, 190–.

Received from —— —— a receipt or Bill of Lading of the —— Co., for the following described packages (contents and value unknown) in apparent good order, consigned as marked and numbered in the margin, to be transported over the line of said company and delivered in like good order and condition to the Chicago, Burlington & Quincy Railway Company, at —— thence if duly delivered as aforesaid to be transported over the line of the Chicago, Burlington & Quincy Railway Company, subject in all respects to the conditions and regulations of the published tariff and rules of the above company to destination, if on the line of said Chicago, Burlington & Quincy Railway Company. If destination is not on the line of the Chicago, Burlington & Quincy Railway Company, delivery or tender to be made at any convenient station on the line of the Chicago, Burlington & Quincy Railway Company to a connecting carrier; whereupon all further liability of the Chicago, Burlington & Quincy Railway Company shall cease.

Goods in Bond Subject to Custom House Regulations and Expenses.

In the event of the loss or damage to any property for which the carriers may be responsible under this Bill of lading, the value or cost of the same at the point and time of shipment is to govern in the settlement for the same, unless the value of the property has been otherwise agreed upon with the shipper, or is determined by the classification upon which the rates are based, and in case of loss of or damage to any of the property named in this Bill of Lading, for which the Chicago, Burlington & Quincy Railway Co. may be liable, it is provided that the Chicago, Burlington & Quincy Railway Co. may have the benefit of any insurance affected by or on account of the owner of said property.

It is further provided that no claim for loss or danger to property shipped under this contract shall be valid against the Chicago, Burlington & Quincy Co., unless the claim for such loss or damage shall be verified by affidavit and delivered to a General Freight Agent of the Chicago, Burlington & Quincy Railway Co., or to the Agent of the Chicago, Burlington & Quincy Railway Co. at the place of destination or delivery of such property, within ten (10) days from the time said property was delivered to consignee. In case of total loss of said propery, claim shall be made as aforesaid, within ten (10) days after the owner has received notice from any source of said loss.

54 All carload freight shall be subject to a minimum charge for trackage and rental of $1.00 per car for each 24 hours detention, or fractional part thereof, after the expiration of 48 hours from its arrival at destination, and the carrier shall have the same lien, and to the same extent upon the property for such charges, as for the transportation charges.

Erasures or Alterations Are Not to be Made on this Receipt.

Marks and consignees.	No. pkgs.	Description of property as given by consignor.	Weight, subject to correction.

Rates.

From ——.
To ——.

If 1st Class..... — cts. per 100 lbs.
" 2nd Class..... — " " " "
" 3rd Class..... — " " " "
" 4th Class..... — " " " "
" 5th Class..... — " " " "
" Special Class..... — " " " "
" Double First Class. — " " " "
" " . — " " " "
" " . — " " " bbl.
" " . — " " " car.

Freight may be collected upon the weight by the Company's Scales, but no single shipment consisting of one or more classes will be taken for less than the Minimum charge as provided for in the governing tariffs.

Carload freight subject to the current rules as to minimum and maximum weights.

Charges Advanced, (if any) —.

It is expressly understood and agreed that this bill of lading is issued at the request of and for the convenience of the shipper, and that said freight has not yet been received by the Railway Company, and that no obligation in respect to said freight is assumed by this Railway Company, nor will this bill of lading be in force until said freight is received by this Railway Company.

—— ——,
Freight Agent.

Rating Acceptable, Subject to Rule 4 of Western Classification.
Subject to Classification, Rules and Regulations of Connecting Roads.

55 EXHIBIT "F."

Robert McAfee, Secretary; Lewis E. Beitler, Deputy Secretary; George D. Thorn, Chief Clerk; John F. Whitworth, Corporation Clerk.

Pennsylvania.

Office of the Secretary of the Commonwealth.

HARRISBURG, *Sept.* 18, 1905.

Robert M. Green & Sons, Philadelphia, Pa.

GENTLEMEN: Replying to yours of the 6th inst., permit me to say that the Chicago, Burlington & Quincy Railroad Co., filed last State

ment of Location of Office in this Department, in compliance with the provisions of our Foreign Corporation Act of April 22, 1874, on May 23, 1900, designating as its Pennsylvania agent, Harry E. Heller, Philadelphia.

Yours truly,

ROBERT McAFEE,
H. W. F.,
Secretary of the Commonwealth.

56 Endorsed:—No. 62 Oct. Sessions 1905. U. S. C. C. Green *vs.* C. B. and Q. Ry. Co. Agreement of counsel as to Exhibits. Filed Sept. 29, 1906. Samuel Bell, Clerk. Francis Rawle, John G. Johnson.

57 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct:

I, Samuel Bell, Clerk of the Circuit Court of the United States of America for the Eastern District of Pennsylvania, in the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original Pleas and Proceedings in the case of Robert M. Green *vs.* the Chicago, Burlington and Quincy Railway Company, No. 62 October Sessions 1905, on file and now remaining among the records of the said Court in my office.

In testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 29th day of September in the year of our Lord one thousand nine hundred and Six and of the Independence of the United States the one hundred and Thirty-first.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of C. C.

[Endorsed:] No. 62 Oct. Sessions, 1905. Circuit Court United States Eastern District of Pennsylvania. Robert M. Green, *vs.* Chicago, Burlington & Quincy Rwy. Co. Certified Copy. Record.

Endorsed on cover: File No. 20,400. E. Pennsylvania C. C. U. S. Term No. 435. Robert M. Green, plaintiff in error, *vs.* Chicago, Burlington & Quincy Railway Company. Filed October 4th, 1906. File No. 20,400.

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 11 1906
JAMES H. McKENNEY,

No. 435. October Term, 1906.

Supreme Court of the United States.

Robert M. Green, Plaintiff in Error and Plaintiff below,

vs.

Chicago, Burlington and Quincy Railway Company, Defendant in Error and Defendant below.

ERROR TO CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

MOTION TO ADVANCE UNDER RULE 32.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Plaintiff in Error

Allen, Lane & Scott, Prs., Phila.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1906. No. 435.

Robert M. Green, Plaintiff in Error and Plaintiff below,

vs.

Chicago, Burlington and Quincy Railway Company, Defendant in Error and Defendant below.

ERROR TO CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

MOTION TO ADVANCE UNDER RULE 32.

And now, October 8th, 1906, counsel for plaintiff in error moves the court to advance this case in accordance with Rule 32 of this court, the only question at issue being the jurisdiction of the court below.

The facts and objects of the motion are as follows:—

The suit was an action of trespass to recover damages for personal injuries. A writ of summons was issued and the marshal returned that the defendant corporation was doing business in the Eastern District of Pennsylvania and had an office there for such business and that he served the summons on the agent of the corporation at said office.

The defendant moved to set aside the service on the ground that it was not doing business in said district and that therefore the court had no jurisdiction.

Depositions were taken as to the nature and character of the office and agency maintained by defendant in said jurisdiction.

The court below set aside the service on the ground that the defendant was not doing business in the district and that therefore the court had no jurisdiction.

Plaintiff thereupon took this writ of error under Section 5 of the Act of March 3d, 1891, giving a writ of error direct to this court in cases where jurisdiction is at issue.

The only question at issue is the jurisdiction of the court below.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Plaintiff in Error.

FILE COPY.

Office Supreme Court, U.
FILED.
FEB 19 1907
JAMES H. McKENNE
CLE

No. 435. OCTOBER TERM, 1906.

Supreme Court of the United States

ROBERT M. GREEN, PLAINTIFF IN ERROR,

vs.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR PLAINTIFF IN ERROR.

INDEX.

	Page.
Statement of the Case	1
Specifications of Error	5
Argument	6

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Plaintiff in Error.

Allen, Lane & Scott, Prs., Phila.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1906. No. 435.

Robert M. Green, Plaintiff in Error,

vs.

Chicago, Burlington and Quincy Railway Co., Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The action in the court below was brought by the plaintiff, Robert M. Green, to recover from the defendant, the Chicago, Burlington and Quincy Railway Company, damages for an injury to the plaintiff while a passenger on the defendant's train, at a point in the State of Colorado. (Record, page 5.)

The plaintiff is a citizen of Pennsylvania; the defendant is a citizen of Iowa. The suit was brought in the Circuit

Court of the United States for the Eastern District of Pennsylvania, and the marshal made the following return (Record, page 4):—

"FEBRUARY 28, 1906.

"At Philadelphia, in my District, served the within "writ on the Chicago, Burlington and Quincy Rail-"way Company, a corporation which is doing busi-"ness in the Eastern District of Pennsylvania and has "an office for the transaction of said business at 836 "Chestnut Street, Philadelphia, in said district by giv-"ing a true and attested copy thereof to Harry E. "Heller, agent of said corporation, at said office, on "February 28th, A. D. 1906, at 4.20 o'clock, P. M. "So answers John B. Robinson United States Mar-"shal, per Abram B. Myers, Deputy."

A similar return was made as to service of the statement of plaintiff's demand.

The defendant, upon affidavit, obtained a rule to show cause why the service of the writ and statement should not be vacated, and the rule was subsequently heard upon the affidavit (Record, page 14), the cross examination of the person who made it (Record, page 7), and the documentary evidence produced on such cross examination (Record, pages 24 to 29, inclusive).

The court below made absolute the rule to vacate the service of the writ and statement (Record, page 18), on the ground that the evidence showed that the defendant was not doing business within the State of Pennsylvania. From the judgment of the court, the present writ of error was taken directly to this court. The question raised is one wholly of jurisdiction, and the case is submitted upon the printed briefs under the rules.

There is apparently some inconsistency in the dates and terms and numbers of the affidavit and deposition, owing to the fact that they were originally filed in a suit between the same parties, on the same subject mat-

ter, which was subsequently discontinued, on the ground of a defective return of the marshal, and a stipulation was made in the present case that the same testimony should be used as if taken herein (Record, page 6).

There was no conflict of evidence, and the facts shown to the court by the evidence already referred to were as follows (affidavits, Record, pages 14-17; depositions, Record, pages 7-13; documents, Record, pages 24-29):—

The Chicago, Burlington and Quincy Railway Company, the defendant in the case, is an Iowa corporation, operating a line of railroad from Chicago, Illinois, and St. Louis, Missouri, to Denver, Colorado, with various branches. It does not operate any railroad in the State of Pennsylvania. In order to secure business in competition with other lines the company maintains, in the city of Philadelphia, an office at No. 836 Chestnut Street (Record, page 8). It pays the rent of this office (Record, page 9), and prominently displays its name upon it (Record, page 8), and with its knowledge, its name, with its location at this office is inserted in the city directory and the telephone directory (Record, page 8). At this office, it has a general freight and passenger agent, who has charge of a district comprising portions of the States of Pennsylvania, Maryland, West Virginia and Virginia, and under him are various traveling freight and passenger agents, who report to him (Record, page 9). A staff of employees, consisting of two clerks and two stenographers, are also maintained at this office, who are in the employ of and paid by the company by payroll from Chicago (Record, page 11). The company advertises the names and locations of its "general agents," among which it gives "Philadelphia, Pennsylvania, 836 Chestnut Street, Harry E. Heller, District Freight and Passenger Agent" (Record, page 9). The correspondence from the office at Philadelphia is carried on on letter paper bearing the following printed heading (Record, page 24):—

"Chicago, Burlington and Quincy Railway Com-
"pany, Office of District Freight and Passenger
"Agent, 836 Chestnut Street, Philadelphia."

The character of the business carried on at the office is the securing of business over the railway lines, none of which are situated in Pennsylvania. In order to do this, the railway, through its agency at Philadelphia, advertises in the territory which is in the charge of the agent, answers inquiries as to rates of passenger and freight transportation, endeavors by correspondence and personal calls to secure a share of the business and enters into arrangements with prospective passengers and shippers for transportation as hereinafter stated (Record, page 10).

No tickets to ordinary passengers are kept on hand at the office of the company in Philadelphia, but when a prospective passenger desires a ticket and applies at the office of the company in Philadelphia, the agent there will take the applicant's money, go to one of the railroad companies running out of Philadelphia, and get from that company a prepaid order, which it gives to the applicant, who can then, on his arrival at Chicago, present the order at the Chicago, Burlington and Quincy Railway office there and receive his ticket (Record, page 10). The Chicago, Burlington and Quincy Railway also issues from its office, at Philadelphia, orders to railroad employees at reduced rates for transportation over the line of the Chicago, Burlington and Quincy Railway Company in connection with transportation over other lines. In a few cases the money is received from such employees at the Philadelphia office, and orders for tickets issued to them. In more of the cases, no money is received, but an order is issued at the Philadelphia office which the railroad employee can present at the Western office and there receive and pay for his ticket (Record, page 14). For the convenience of shippers also, the Chicago, Burlington and Quincy Railway, at its office at Philadelphia, receives from freight shippers who have shipped

goods over lines running out from Philadelphia to points reached by the Chicago, Burlington and Quincy Railway Company a surrender of their bills of lading over the initial line, and in return issues a receipt therefor (Record, page 27) entitled a "bill of lading," and which provides that if the goods are duly delivered to the Chicago, Burlington and Quincy Railway Company, they shall be transported over the line of such company at a certain rate of freight, subject to the conditions and regulations of the published tariff and rules, &c., and which further provides as follows:—

> "It is expressly understood and agreed that this "bill of lading is issued at the request of and for the "convenience of the shipper, and that said freight has "not yet been received by the Railway Company, and "that no obligation in respect to said freight is as- "sumed by this Railway Company, nor will this bill "of lading be in force until said freight is received by "this Railway Company.
>
> "Freight Agent."

In addition to these facts it further appeared that on or about October 1st, 1901, the Chicago, Burlington and Quincy Railway Company had leased the lines which it now operates from an Illinois corporation, known as the Chicago, Burlington and Quincy Railroad Company, and that this former corporation had occupied the same office, with the same agent performing the same duties at Philadelphia, and that said former corporation had duly registered with the Secretary of the Commonwealth of Pennsylvania, as a foreign corporation doing business in the State (Record, page 13).

SPECIFICATION OF ERROR RELIED UPON.

The learned Circuit Court erred in making absolute the rule to show cause why the service of summons should not be vacated.

ARGUMENT.

The sole objection to the jurisdiction made by defendant in the court below, and the sole ground on which its objection was sustained, was that the defendant, The Chicago, Burlington and Quincy Railway Company, was not doing business in the State of Pennsylvania at the time of the service of the writ. No objection was made to the method of service or that the agent served was not a representative agent to receive service, if the corporation was doing business in the State. The objection was that the corporation was not engaged in business in the State.

That the railway corporation was doing something in the State of Pennsylvania was not and could not be the subject of dispute. Whether that something amounted to a doing of business which made the corporation liable to suit in the State is the sole question involved.

To a large extent this is a question of fact depending on the evidence printed in the record. Before discussing this evidence, however, it may be well to briefly call attention to the principles of law which determine what state of facts must be established to make a corporation amenable to service of writs.

It was once thought that a corporation could not be sued except in the State under whose laws it was incorporated, and many of the early authorities go to this extent. The injustice of this doctrine and the results which flowed from it, led to the gradual adoption of a doctrine that a suit against a foreign corporation was maintainable on the doctrine of implied consent. This rested on the theory that, as the State could wholly exclude the foreign corporation, it could also impose terms of admission, and that if it specifically provided for suits against a foreign corporation, and the latter then did business within its borders, there was an implied contract that the corporation consented to be sued. The disadvantage of this doctrine was that it would not fit all cases. A State might not specifically provide for suits against foreign corporations, and yet might have gen-

eral laws relating to service generally, or the foreign corporation might be engaged in interstate commerce, and hence not need the consent of the State to come within the latter's borders.

The best considered decisions have now adopted the broad doctrine, that when a corporation, through its properly constituted agents, engages in business in a foreign jurisdiction, it may, irrespective of any consent, be found there for purposes of suit, and service upon its agents is service upon it, provided always that the agent is of such a representative character that service upon him may properly be considered service upon the corporation.

The development of the law on this subject can be readily traced in the opinions and cases cited in

Lafayette Ins. Co. *vs.* French, 18 How., 404;
Ex parte Schollenberger, 96 U. S., 369;
St. Clair *vs.* Cox, 106 U. S., 350;
Barrow Steamship Co. *vs.* Kane, 170 U. S., 100.

The last of these cases settled the question whether the broad rule above stated should be adopted.

In that case the suit was in the Circuit Court of the United States for the Southern District of New York, by a citizen of New York against a British corporation. It was for a tort committed in Londonderry Harbor, and there were no statutes of New York authorizing service on a foreign corporation under such circumstances. It was therefore a case in which there could be no implied contract or consent on the part of the foreign corporation. This court sustained the jurisdiction. The Courts of England have reached the same conclusion and the doctrine thus established will probably be ultimately recognized as the true doctrine in all the courts, State as well as Federal.

As to what constitutes the doing of business by a foreign corporation, it is manifestly impossible for the courts to lay

down any hard and fast rule. A single isolated transaction would not usually be sufficient, although the transaction might be of such magnitude, and involve so many acts as to be an exception to such a rule. A series of transactions in the State long continued usually amounts to the carrying on of business, but here again the acts might be of such a character, as, for example, the mere solicitation by traveling salesmen as not to come within the rule. Each case must be judged by its own circumstances. There are, however, certain elements which, if one or more of them exist, are usually considered to indicate the carrying on of a business, as *e. g.*:—

1. The establishment of a permanent office to which all persons having business with the corporation may come.
2. The employment of an agent located within the State who is advertised as a general agent of the corporation for such business as it transacts in the State.
3. The continuous making within the State of contracts binding on the corporation.

Examining the facts of the present case as disclosed by the evidence and in the light of the principles above referred to, it is submitted that the Chicago, Burlington and Quincy Railway Company was subject to the jurisdiction of the United States Circuit Court in which it was sued.

It was a railroad corporation of the State of Iowa, and operated certain lines of railroad west from Chicago. In order to meet the competition of other roads, it came into the State of Pennsylvania and there rented an office, on a prominent street in the city of Philadelphia, on which it prominently displayed its name, and at which, in addition to the agent in charge, it maintained an office force of two clerks and two stenographers. With its knowledge and consent, its name was inserted in the city and telephone directories, with its location at this office. It would be difficult to imagine an act more conclusive of its intention to locate in the State of Pennsylvania for the purpose of doing business therein. Had an individual rented a store

or an office in a similar manner, displayed his name on the outside and put a corps of his employees within, no one would have contended that he was not doing business there. If the corporation was not doing business at that place, whose was the business that was carried on? Something was being done by the agent in charge and the four employees. There must have been some object in renting the office, displaying the sign and keeping the four employees busy, and there is no other reasonable explanation, except that it was business of the corporation carried on for the corporation at the corporation office.

There have been cases in which it was the subject of dispute whether the office was really the office of the corporation or the personal office of the agent but in this case it is admitted that the corporation rented the office, displayed its name on it and kept its own employees at work within it.

On this ground alone it is submitted the court below should have held that the corporation was doing business in Pennsylvania.

Equally strong was the evidence as to the designation by the corporation of a general agent located within the State.

On page 25 of the Record will be found a sample of the defendant's advertisements. It contains a list of its "General Agents" and its "Traveling Passenger and "Freight Agents." In this list under the head of "Phila-"delphia, Pa., 836 Chestnut Street," is put "Harry E. "Heller, Dist. Fht. and Pas. Agt.—R. E. Wheeler Travel-"ing Passenger Agent, B. C. Cloud, Traveling Freight "Agent."

Harry E. Heller testified (Record page 9):—

> "15 × Q. Referring now to the advertisement in "the official guide and to the list headed 'General "'Agents and Traveling Passenger Agents,' will you "please explain what is the difference between a Gen-"eral Agent, a Traveling Passenger Agent and a

"Traveling Freight Agent? A. The General Agent "has charge of a district and is assisted by a Travel- "ing Freight and a Traveling Passenger Agent, re- "porting to the General Agent. 16 × Q. You would "therefore be the General Agent? A. Yes, sir. 17 "× Q. And what would be your district? A. My dis- "trict comprises the State of Pennsylvania as far West "as Altoona, that is in the middle, Cumberland, Md., "Charleston, W. Va., then directly South to the "North Carolina line in Virginia."

Here then was the employment of a general agent located in the State of Pennsylvania and having charge of a large district within which were employed traveling agents, who reported not to any office of the corporation in Iowa, but to the general agent at the office of the corporation in Philadelphia. There was, therefore, in the State of Pennsylvania, an agent who was in general charge of a branch of the company's business within a large district and the employees within that district reported to him as the representative of the company.

If within that district any one wished to correspond with the corporation on freight or passenger business, they were informed by the advertisement that Mr. Heller was the general agent of the company, and that he was the proper person and the office of the company at Philadelphia the proper place to receive communications.

Short of locating its principal office at Philadelphia, and putting its president in charge, it is difficult to see how the corporation could have more clearly indicated than it did that it was doing business in Philadelphia through a general agent located there for that purpose.

Equally strong is the inference to be drawn from the making of contracts in the State of Pennsylvania.

The evidence shows that in addition to the advertisement and the personal solicitation of business three different kinds of contract were habitually made at the office in the city of Philadelphia, viz.:—

First.—Contracts for transportation of ordinary passengers.

Second.—Contracts for transportation of railroad employees at reduced rates.

Third.—Contracts for the transportation of freight.

The character of the contracts for the transporation of passengers is illustrated by the case of R. L. Gardiner. In answer to an inquiry by postal a letter (Record page 24) was sent to him by the general agent upon a letterhead bearing the name of the corporation and its office at Philadelphia. In that letter it was said:—

> "We can furnish you with ticket or an order for "ticket at this office reading from Chicago to Den- "ver."

The agent testified (Record page 10):—

> "If Mr. Gardiner had called at our office for a ticket "from Chicago to Denver, we would have gone to the "Pennsylvania Railroad Company or the Philadelphia "and Reading and gotten what we call a prepaid or- "der issued by that line, pay them the money for it "and hand it to the passenger. He would have pre- "sented that order on arrival at Chicago and gotten a "ticket from Chicago to Denver and return or one "way as the case might be."

It is manifest that the contract with the passenger was complete the minute the agent at the Philadelphia office of the Chicago, Burlington and Quincy Railway Company handed the prepaid order to the passenger at that office. If when the passenger arrived at Chicago, the railroad had refused to honor the order the passenger would have had a right of action, and this not against the Pennsylvania Railroad Company or the Philadelphia and Reading Railroad Company, but against the Chicago, Burlington and Quincy Railway Company, whose agent had sold him the order at the company's office in Philadelphia.

The contracts for the transportation of railroad employees were similar in character, except that railroad employees are entitled to transportation at reduced rates, and also except that in the case of their transportation, the agent at the Philadelphia office usually gave them an order entitling them to a ticket at the point of junction of the initial carrier with the Chicago, Burlington and Quincy Railway upon payment of the price there. In some instances, however, the agent at the Philadelphia office took the cash price and issued a prepaid order. In each case, however, the contract was closed at the Philadelphia office, and had the Chicago, Burlington and Quincy Railway Company refused to honor the order, it could have been sued by the purchaser on the ground of the contract made by him with the Philadelphia agent at the Philadelphia office.

The contract for the transportation of freight was somewhat similar. If a shipper, through the solicitations of the agent at Philadelphia, was induced to agree that goods destined to a point in the territory reached by the Chicago, Burlington and Quincy Railway lines, should be shipped via those lines, he would first take a bill of lading from the initial carrier from Philadelphia to the point of junction with the Chicago, Burlington and Quincy Railway. This bill of lading he would surrender to the Philadelphia agent of the Chicago, Burlington and Quincy Railway Company at the Philadelphia office of that company and receive in return a receipt called a bill of lading, a copy of which is printed in full on page twenty-seven of the Record. This receipt, signed by the Philadelphia agent, acknowledges the receipt of the bill of lading of the initial carrier and undertakes, that if the goods are delivered to the Chicago, Burlington and Quincy Railway at the terminus of the initial line, the Chicago, Burlington and Quincy Railway will transport them over its lines at a specified rate of freight. There was also printed on it a stipulation that the goods had not yet been received by the Chicago, Burlington and Quincy Railway

Company, and that the company assumed no obligation in respect to them, nor would the bill of lading be in force until the goods were received by the said company.

As in the case of the passenger contracts, so in the case of the goods, the contract was made at the Philadelphia office of the corporation by its agent located there. It was to be performed by transportation of the goods in various other States. The liability of the corporation was conditional upon the actual receipt of the goods by it at the junction with the initial line, but it could not refuse to receive the goods, nor could the shipper select another route. A contract had been made in Pennsylvania, binding on both parties.

In the court below it was argued that the shipping receipt or bill of lading issued by the corporation in Philadelphia in exchange for the surrender of the bill of lading issued to the shipper by the initial line was not a binding contract made in Pennsylvania, but a mere application by the shipper for a contract to be made in Illinois, and in support of this contention the decision of this court in Holder *vs.* Aultman 169 U. S., 81, was cited.

This latter case, however, simply ruled that a contract signed by a local agent in Michigan, and which expressly stipulated that it was not to be "valid" unless countersigned at Ohio, was not "made" in Michigan, but in Ohio. In the present case the contract was valid and complete in Pennsylvania. The company received at its office in Pennsylvania the consideration for it in the surrender to it of the shipper's bill of lading over the initial line. It contained, it is true, the provision that as the goods had not yet been received by the company, no obligation was assumed by the company, nor would the bill of lading be in force until the freight was actually received, but this was far from stipulating that the contract was conditional upon any approval or signature at Chicago. On the contrary, the company was bound to receive the goods when they reached its lines, and the shipper having surrendered his bill of lading for them, and thus given the

company the sole right to receive them from the initial line, was equally bound. The contract was complete on both sides. It was to be performed by the railroad in Illinois. It had been partially performed in Pennsylvania by the shipper by surrender of his original bill of lading at the company's office in Philadelphia, but it had undoubtedly been made in Pennsylvania by the company's agent at the company's office there.

In all three cases, therefore, the corporation habitually made binding contracts in Pennsylvania, through its agents there. It was for the very purpose of making such binding contracts there and thus securing there the passengers and freight for its lines that it established an office and located a general agent there. It did not pretend to be an agent for the initial carriers. It made these contracts through its own agent at its own place of business, on its own account, and it made them in Pennsylvania because it preferred to do the business in Pennsylvania, and thus secure the freight and passengers beyond recall, rather than to trust to the uncertain chance of capturing them at Chicago.

Either one of the three grounds given above, viz., location of office, appointment of general agent and making of contracts, would, it is submitted, have been sufficient to sustain the jurisdiction. Together they would seem to place the question beyond dispute.

There are two reported cases, one Federal and one State, in which the facts are almost if not quite identical with the present case.

In the case of

Denver & R. G. R. R. Co. *vs.* Roller, 100 Fed., 738,

the Denver & Rio Grande Railroad Company, a corporation of the State of Colorado, was sued in California for a tort committed in Colorado, and the action was removed to the United States Circuit Court for the South-

ern District of California. A motion was made to dismiss the action for want of jurisdiction. It appeared that the railroad company had an office in the city of San Francisco with a sign "Denver and Rio Grande R. R. Freight "and Passenger Office." On a folder issued by it was found the name of "W. J. Shotwell, Gen'l. Agt. Pacific "Coast, 314 California Street, San Francisco." At that office the agent and the clerks under him solicited passengers and shippers to travel or send freight over the railroad lines and issued shipping receipts or bills of lading. The form of these shipping receipts is not given, but as they were issued in California for freight which started from that point over other lines, they were probably of the same nature as the shipping receipts in the present case.

The court below sustained the jurisdiction, and upon writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, Mr. Justice McKenna, sitting as one of the court, the judgment was affirmed.

The court (Hawley, D. J., delivering the opinion), after reciting the above facts, said:—

> "It thus clearly appears that the plaintiff in error "had a business office in the city of San Francisco, "State of California, and a managing agent in charge "of that office, for the purpose of soliciting business "in transporting passengers and freight over its road, "situated in the State of Colorado. Is not this suffi- "cient to authorize a valid service of summons upon "the authorized agent of the corporation? It will be "noticed that, if there is no cashier or secretary upon "whom service can be made, the code does not spec- "ify the extent of the agency required in order to bind "a non-resident corporation by service of summons, "except that the person must be a 'managing or busi- " 'ness agent.' It is obvious that this does not mean "that it must be the general managing agent of the "corporation. The object of the service is attained "when the agent served is of sufficient rank and char- "acter as to make it reasonably certain that the cor- "poration will be notified of the service, and the stat-

"ute is complied with if he be a managing or business "agent in any specified line of business transacted by "the corporation in the State where the service is "made. That Shotwell, upon whom the service was "made, was such an agent, is manifest from the facts "above stated."

The case of

Tuchband *vs.* Chicago & Alton R. R., 115 N. Y., 437,

was a somewhat similar case. The suit was in the State of New York for a cause of action arising in Missouri. The defendant was a railroad corporation incorporated under the laws of another State. The statutes of New York allowed service on the "managing agent" of a foreign corporation if it had property in the State.

It was shown that there was an office, 261 Broadway, New York City, on the windows of which were the signs "Chicago and Alton Railroad," "Freight and Passenger "Agency Chicago and Alton Railroad" and "Chicago and "Alton Railroad Office." On its circulars and time tables it gave in its list of officers and agents, Charles Oberg, "General Agent, Passenger Department, 261 Broadway, "New York." The agent testified that he had charge of the correspondence and business matters relating to carriage of passengers, but had nothing to do with the freight department. The property of the corporation in the State consisted of office furniture, tickets and other articles in its office and cars for transportation.

The service was made on the general agent in charge of this office, and the Court of Appeals of New York sustained the jurisdiction, saying:—

"When the corporation has an office in this State "where a substantial portion of its business is trans- "acted by a person designated by itself as a general "agent, although followed by words indicating some "one department, it may safely be assumed that the "object of the statute will be accomplished. It, of "course, intends a 'managing agent' in this State,

"and where a corporation created by the laws of any "other State does business in this State, the person "who, as its agent, does that business should be con- "sidered its managing agent, and more especially "should that be so where the foreign corporation has "an office or place of business in this State, and when "that office is in charge of that person and he there "acts for the corporation. He is there doing busi- "ness for it, and so manages its business. Such per- "son is, in every sense of the words used in the stat- "ute, 'a managing agent.' Corporations of this de- "scription have become very numerous. They carry "on an extensive business in this State. They may "sue in our courts and may be required to answer as "defendants in the same tribunals, and if they have "notice to do so in the simple and summary manner "prescribed by statute, the ends of justice will be at- "tained.

"It was the duty of Oberg, the person served, to "send the papers he received to his principal, and it "was his declared intention to do so. It was, in fact, "done, and the defendant appears not to answer to "the suit, but to complain of the insufficiency of serv- "ice. We think the objection unavailing."

The court below in the present case bases its decision against the jurisdiction upon two grounds (Record, page 18), viz:—

First.—That the case was ruled by the previous decision of the same court in Earle *vs.* Chesapeake & Ohio R. W. Co., 127 Fed. Rep., 235.

Second.—That it was ruled by certain decisions of the Supreme Court of Pennsylvania cited in the brief of defendant.

These will be examined separately.

It is not necessary to discuss the question whether the case of Earle *vs.* Chesapeake and Ohio Railway Company was correctly decided. It is at variance with the decision of a federal court of equal jurisdiction in Van Dresser *vs.* Oregon R. W., &c., 48 Fed. Rep., 202. Whether cor-

rect or not, it has no bearing on the present case, since the facts were widely different. In Earle *vs.* Chesapeake & Ohio Railway Company, the defendant railway company had no office in the State of Pennsylvania; had no general agent in that State and made no contracts therein. It was a member of a freight soliciting bureau, known as Kanawha Despatch, composed of various railroad companies whose lines constituted a through route. The Kanawha Dspatch had an office and an agent in Pennsylvania, and the principal question in the case was whether the office was the office of the railroad company and the agent its agent. The court expressly found (127 Fed., 240) that the railroad corporation maintained no office in the State, and that the fact that it was a member of the soliciting bureau known as the "Kanawha Despatch" and contributed to the latter's expenses did not constitute the doing of business within the State.

So far from furnishing ground for declining jurisdiction in the present case, the case of Earle *vs.* Chesapeake & Ohio R. W. Co. might be cited as authority for sustaining that jurisdiction, since the decision against the jurisdiction in that case was based upon the absence of the very facts which existed in the present case. In that case it was found rightly or wrongly that the corporation maintained no office, had no agent and made no contracts. In the present case, the evidence conclusively showed that the corporation in its own name maintained an office, had a general agent and made contracts. It is submitted therefore that this, the principal reason given by the court below for denying jurisdiction, wholly fails.

The second reason given by the court below is that it is ruled by certain cases in the Supreme Court of Pennsylvania referred to in the brief of counsel for defendant (Record, page 9).

These cases were:—

Kilgore *vs.* Smith, 122 Pa., 48;
Comth. *vs.* Bell Tel. Co., 129 Pa., 217;
Fulton *vs.* Com. Travellers &c. Co., 172 Pa., 117;

Mearshon *vs.* Pottsville Lumber Co., 187 Pa., 12;
Wolf Dryer Co. *vs.* Bigler, 192 Pa., 466;
Building Assn. *vs.* Berlin, 201 Pa., 1;
Delaware &c. Construction Co. *vs.* Bethlehem R. R., 204 Pa., 22.

Before discussing these cases it may be well to call attention to the fact that the question is not one of State law. Under the decision of this court in

Barrow Stp. Co. *vs.* Kane, 170 U. S., 100,

the liability of a corporation to suit in a United States Court does not necessarily depend either upon any contract express or implied between the corporation and the State, or upon any State statute, but upon the fact whether the corporation has located itself within the jurisdiction of the court, and has within that jurisdiction a representative agent upon whom service can be made. The court in that case said:—

> "The fact that the legislature of the State of New "York has not seen fit to authorize like suits to be "brought in its own courts by citizens and residents "of other States cannot deprive such citizens of their "right to invoke the jurisdiction of the national courts "under the Constitution and laws of the United "States."

It may also be pointed out that the question whether a corporation is found within the jurisdiction does not necessarily depend upon whether it is doing business within the State laws regarding taxation or within the State laws requiring registration and appointment of an agent under penalty of refusal to enforce contracts.

It might well be that a corporation engaged in interstate commerce might not be subject to taxation or compelled to register under laws relating to the doing of business by foreign corporations, and yet might be liable to suit both in the State and Federal courts, if it had in fact established an office within the jurisdiction and was carrying on a branch of its business there.

Before considering the cases referred to, it may be useful also to refer to the statutes of Pennsylvania relating to foreign corporations, and the decisions as to method of service.

Art. XVI, Section 5, of the Constitution of Pennsylvania provides:—

> "No foreign corporation shall do any business in "this State without having one or more known places "of business and an authorized agent or agents in the "same upon whom process may be served."

Sections 1 and 2 of the Act of April 22, 1874, P. L., 108, provide:—

> "SECTION 1. No foreign corporation shall do any "business in this Commonwealth until said corpora- "tion shall have established an office or offices and ap- "pointed an agent or agents for the transaction of its "business therein.
>
> "SECTION 2. It shall not be lawful for any such cor- "poration to do any business in this Commonwealth "until it shall have filed in the office of the Secretary "of the Commonwealth a statement under the seal "of said corporation and signed by the president or "secretary thereof, showing the title and object of "said corporation, the location of its office or offices "therein, and the certificate of the Secretary of the "Commonwealth under the seal of the Common- "wealth of the filing of such statement shall be pre- "served for public inspection by each of said agents "in each and every of said offices."

Section 3 of the Act of March 21, 1849, P. L., 216, provides:—

> "In all suits or actions hereafter to be brought in "any court of record of this Commonwealth, against "any foreign corporation or body corporate, not "holding its charter under the laws of this Common- "wealth, every judgment, verdict or award rendered "against such corporation shall be final and conclu- "sive, unless the said defendants, in addition to the "usual proceedings in cases of appeal, shall give good

"and sufficient bail, in the nature of bail absolute, for "the payment of such sum or sums as shall be finally "adjudged to be due to the plaintiff or plaintiffs, to- "gether with interest and costs thereon. And in the "commencement of any suit or action against any "such foreign corporation, process may be served "upon any officer, agent or engineer of such cor- "poration, either personally or by copy, or by leav- "ing a certified copy at the office, depot or usual "place of business of said corporation, and such serv- "ice shall be good and valid in law to all intents and "purposes."

The second section of the Act of July 9, 1901, as amended by the Act of April 3d, 1903, P. L., 139, provides:—

"*Second.* The writ of summons, the writ of attach- "ment in execution, and the writ of *scire facias* in per- "sonal actions, may be served by the sheriff upon a "corporation, a partnership limited, or a joint stock "company, in the county wherein it is issued. in any "one of the following methods:

"(*a.*) By handing a true and attested copy thereof "to the president, secretary, treasurer, cashier, chief "clerk, or other executive officer, personally; or,

"(*b.*) By handing a true and attested copy thereof "to an adult member of the family of any one of said "officers, at his dwelling house; or,

"(*c.*) By handing a true and attested copy thereof, "at his place of residence, to an adult member of the "family of the person with whom any of the said "officers resides; or

"(*d.*) By handing a true and attested copy thereof, "at his place of residence, to the manager or clerk "of the hotel, inn, apartment house, boarding house, "or other place of lodging, where any of said officers "resides; or,

"(*e.*) By handing a true and attested copy thereof, "at any of its offices, depots or places of business, to "its agents or person for the time being in charge "thereof, if upon inquiry thereat the residence of one "of said officers within the county is not ascertained, "or if from any cause an attempt to serve at the "residence given has failed; or,

"(*f.*) If the corporation, partnership limited, or "joint stock company has no office or place of busi- "ness in actual operation in the county where the "cause of action arose, then service may be made in "such county upon any member of its board of direc- "tors, in any of the methods set forth in clauses *a*, *b*, "*c*, or *d* hereof; or,

"(*g.*) If the corporation, partnership limited, or "joint stock company has no office or place of busi- "ness in actual operation in the county in which the "cause of action arose, and no member of its board "of directors, or other officers, is a resident of the "county in which the cause of action arose, then serv- "ice may be made in any of the methods set forth in "clauses *a*, *b*, *c*, *d*, *e*, or *f* hereof, in any other county "than that in which the writ issues, by the sheriff of "such other county, who shall be deputized for that "purpose by the sheriff of the county in which the writ "issues; or,

"(*h.*) In the case of a registered foreign corpora- "tion, partnership limited, or joint stock company, "by serving its duly registered attorney as in the "case of a summons issued against him personally, "or by leaving a true and attested copy thereof for "him, at the registered place, if he be not found there "during the usual business hours of any business day, "with the person for the time being in charge of the "business carried on at such place.

"Provided, That two returns of *nihil habet* be equiv- "alent to personal service in writs of *scire facias*, to "revive judgments entered in personal actions."

In interpreting these statutes, the Supreme Court of Pennsylvania has decided:—

First.—That a foreign corporation doing business in Pennsylvania may be sued therein, notwithstanding that it has filed no statement nor designated an agent to accept service.

Hagerman *vs.* Empire Slate Co., 97 Pa., 534.

Second.—That if a foreign corporation fails to register, it cannot enforce its contracts by suit in Pennsylvania courts.

Delaware River &c. Co. *vs.* Bethlehem &c. Co., 204 Pa., 22.

Third.—But that it will not be considered as doing business so as to subject itself to this penalty if its business is solely interstate commerce and it has no established office or general agent in the State.

Mearshon & Co. *vs.* Pottsville &c. Co., 187 Pa., 12.

The Pennsylvania cases referred to by the court below as sustaining the contention that the court had no jurisdiction will now be examined.

The case of

Kilgore *vs.* Smith, 122 Pa., 48,

was an action or replevin. A number of canners, some in Maryland and some in Pennsylvania, had formed a Maryland corporation for the sale of their goods. The Maryland corporation became largely indebted, and at a meeting of its directors, held at a town in Pennsylvania, on the Maryland line, and extending into both States, sold a large quantity of goods to one of its creditors, including the goods in the hands of one of its Pennsylvania members. The latter refused to deliver up the goods and, upon replevin brought by the purchaser, set up as a defense that the transaction amounted to the doing of business in Pennsylvania, and that, as the Maryland corporation had not registered, it could not enforce its contract in the Pennsylvania courts.

The court held that neither the fact that there were Pennsylvania members of this co-operative Maryland corporation, nor the fact that an occasional meeting was held at a town on the State line, constituted the doing of business which would make the contract unlawful, and sustained the action.

The case of

Comth. *vs.* Bell Tel. Co., 129 Pa., 217,

was an appeal by a Massachusetts corporation from a settlement of taxes in Pennsylvania. The only question involved was whether the Massachusetts corporation employed any part of its capital in Pennsylvania by leasing under Massachusetts contracts telephones to be used in Pennsylvania by Pennsylvania corporations on payment of royalty. The court held that the Massachusetts corporation did not employ any part of its capital in Pennsylvania and was not taxable.

The case of

Fulton *vs.* Commercial Travellers' &c. Co., 172 Pa., 117,

was a suit in Pennsylvania against a mutual insurance company of another State. The return of the sheriff was that he had served the writ by delivering a copy to "Dr. T. J. Patterson, agent for" the corporation. A rule was taken to set aside the service. The court below upon the evidence found:—

First.—That T. J. Patterson was a mere physician or surgeon for the company, whose sole duty was to examine members and report, and that he was not an agent on whom service could be made.

Second.—That as all applications for membership were sent to New York and all policies issued there, the company was not doing business in Pennsylvania.

The court below set aside the service, and this was affirmed in the Supreme Court in a short *per curiam* opinion.

There is nothing in the case to indicate that the company had any office or general agent in Pennsylvania, or that it ever sent agents into Pennsylvania or made or performed contracts there.

The case of

Mearshon *vs.* Pottsville Lumber Co., 187 Pa., 12,

was a suit of a Michigan corporation to recover the price of goods. The case is also reported in 42 Weekly Notes

of Cases, 399. No very clear statement of facts is given in either report, but from the opinion of the court, and the facts stated in the two reports, it appears that the Michigan corporation at one time had a resident agent named Bacon and duly registered as a foreign corporation, giving Bacon's name as a resident agent to accept suit. Subsequent to this, the office was given up, and Bacon removed from the State. Subsequent to such removal Bacon came to Pennsylvania, as a salesman for the Michigan corporation, and obtained an order from defendants for goods, which order the Michigan corporation executed in Michigan. The goods were not paid for and the Michigan corporation brought suit. The defense was that at the time of suit the Michigan corporation had no office or resident agent in Pennsylvania, but the court held that taking an order for goods by non-resident salesman was not a doing of business which made registration necessary.

In the course of this opinion, the court refers to a case of

Blakeslee Mfg. Co. *vs.* Hilton, 5 Pa., Superior, 184, a decision by an intermediate Appellate Court, and quotes with approval the following language from the opinion on that case:—

> "All that is hereby alleged is entirely consistent "with the conduct of a foreign corporation engaged "in strictly interstate commerce. It may advertise "its goods, take orders, make contracts of sale re- "specting the same, and ship them to customers in "this State. It may also employ agents living in "Pennsylvania to go from county to county, from "town to town and from person to person to secure "orders, or the agent may never go outside of his "own county, city or town, thus being in one sense "a local agent, and yet be doing a business which is "not and cannot be reached under our Act of 1874. "* * * The words 'doing any business' as used in "the Act should not be construed to mean taking or- "ders or making sales by samples, by agents coming "into our State from another for that purpose. To

"hold otherwise would make the Act offend against "the Constitution of the United States as imposing "unlawful restrictions on interstate commerce."

The above case of

Blakeslee Mfg. Co. *vs.* Hilton, 5 Pa., Superior, 184,

referred to by the Supreme Court of Pennsylvania was a suit for the price of a steam pump sold by an Illinois corporation f. o. b. cars, Duquoin, Ill. The defendant in his affidavit of defense alleged that the pump was ordered from the Illinois corporation through its agent, Eugene McIlvaine, located at Bradford, Pennsylvania, but it was not stated that McIlvaine was a permanent or resident agent, or that he had an office or place of business of business or stock of goods in Pennsylvania. Elsewhere in the affidavit it was alleged that the Illinois corporation had advertised through its local agent and by other means its purpose and intention to transact business within Pennsylvania, offering to sell its goods to customers residing in Pennsylvania and had made many sales of goods to residents of Pennsylvania.

The court held that these allegations were too vague and indefinite to show that the corporation was doing business in Pennsylvania within the meaning of the Act requiring registration, and hence that the plaintiff was not precluded from maintaining the suit.

The case of

Wolf Dryer Co. *vs.* Bigler, 192 Pa., 466,

was an action of replevin by an Illinois corporation to recover a "dryer" which had been sold to defendant under terms which reserved the title in plaintiffs until payment. Defendant refused to either pay or return the dryer and upon replevin being brought set up that the Illinois corporation had not registered as a foreign corporation and could not therefore maintain the suit. The facts relied upon and the decision with regard to them sufficiently appear in the following extract from the opinion:—

"The contention that the plaintiff could not main- "tain an action in this State because it was a foreign

"corporation and had not complied with the provi-
"sions of the Act of April 22, 1874, P. L., 108, is
"without merit. It had no office or place of business
"in Pennsylvania and no part of its capital was here.
"The machinery sold was shipped either directly from
"its factory in Chicago or upon its orders given to
"other manufacturers. The fact that its agent came
"into this State and made contracts for machinery to
"be delivered here did not bring it within the inhibi-
"tion of the Act of 1874."

The case of

People's Bldg. & Loan Assn. *vs.* Berlin, 201 Pa., 1, was an action to foreclose a mortgage held by a New York Building Association on property in Pennsylvania. The mortgage was negotiated through agents of the Building Association at Bradford, Pennsylvania, but this agent merely sent the application to the company's office in New York, and the contract was completed there and the money to be paid there. The defense set up was that the plaintiff was a foreign corporation which was doing business in Pennsylvania but had never registered there, and that therefore it could not maintain the suit.

The court reversed a judgment for defendant saying:—

"The remaining question for consideration is,
"whether the transaction, on the part of the plaintiff,
"was such a 'doing of business' in Pennsylvania as is
"contemplated in the prohibition of the Act of
"April 22, 1874. As we have already seen, under the
"articles of association and the by-laws, and as a mat-
"ter of fact, the business of the association was done
"in New York. Its corporate functions were all ex-
"ercised there. The applications for stock and for
"the loan were made and considered in New York,
"and there accepted. By the express terms of the by-
"laws, the money paid by the stockholders and bor-
"rowers was to be paid there, as was also the pay-
"ment of the money to the defendant by the asso-
"ciation in the completion of the transaction. In the
"contemplation of the law, the entire contract, from
"inception to the finish, was performed in New York.

"The opinion of the Superior Court seems to be "grounded upon the assumption that the transaction "involved the investment or employment of a part "of the plaintiff's capital within the State of Pennsyl- "vania. The money was, however, loaned on the "bond, a New York contract, and the mortgage was "given merely as security. The plaintiff took no title "to any property in Pennsylvania by the transaction. "It merely made a loan of part of its capital to one "of its shareholders, who was a citizen of Pennsyl- "vania. The capital, if employed in the State of "Pennsylvania, was so employed by a citizen of Penn- "sylvania and not by the plaintiff corporation. In "so far as the business of loaning money was con- "cerned, it was carried on in the State of New York, "and not in the State of Pennsylvania. If the opera- "tions of the plaintiff be measured by the test of "agency, they will not be found, under the decisions, "to be in violation of the Act of 1874. The Act of a "foreign corporation in selling goods here by agents, "and shipping the goods to purchasers, is not doing "business in this State, within the prohibition of the "Act: Mearshon *vs.* Pottsville Lumber Company, "187 Pa., 12; Wolff Dryer Company *vs.* Bigler & Co., "192 Pa., 466. The most that can be said of the plain- "tiff is that it had an agency at Bradford, by which "its shareholders in that vicinity were more conve- "niently enabled to do business with the home office "of the plaintiff corporation in New York."

The case of

Delaware &c. Construction Co. *vs.* Bethlehem R. R., 204 Pa., 22,

was a creditor's bill filed by a New Jersey corporation to obtain a receiver for a railway company which owned the New Jersey corporation $31,765.43 for labor and materials furnished in the construction of a railway in Pennsylvania. The defendant demurred on the ground that the plaintiff by constructing for defendant ten miles of road in Pennsylvania had done business in that State, and that as it had not registered until two months after

the work was completed, it could not maintain its bill. The court below sustained the demurrer and the Supreme Court affirmed the judgment, holding that the Act of 1874 prohibited foreign corporations from doing business without filing a statement giving the location of its office and the name of its agent; that the defendant had come into the State with its workmen, and for six months had been engaged in building a railway there; that the subsequent registration could not validate the prior business, and that the public would not receive the protection designed by the Act if the corporation was allowed to maintain a suit based on the work done and materials furnished before registration.

The foregoing are all the decisions of the Supreme Court of Pennsylvania cited in the argument in the court below in the present case, and this review of them shows that not one of them is authority for the conclusion reached by the court below in the present case, that the Chicago, Burlington and Quincy Railway Company was not doing business in Pennsylvania.

Only one of the seven cases involved any question of the liability of a foreign corporation to suit, and in that case (Fulton *vs.* Com. Travellers &c. Co., 172 Pa., 117) it did not appear that the company had any office or general agent in Pennsylvania, and the service was on an examining physician who was clearly not a representative agent of the company.

The other cases involved the right of the State to tax foreign corporations or to deny them the right to bring suit as a penalty for not registering. The question as to what will be a doing of business which will enable a State to tax or to deny the right of suit, is manifestly a different question from the one as to what will be such a doing of business as will amount to the coming of the corporation within the jurisdiction, so as to subject it to suit. The State, for example, might not be able to tax or to impose unreasonable regulations on interstate commerce, and yet corporations engaged in interstate com-

merce are not thereby exempt from suit if they open an office and have a general agency in a State. If, however, there were no distinction and the same rule was applicable to both classes of cases, the Pennsylvania cases cited do not support the ruling of the court below. In not one of them was there the establishment within the jurisdiction of an office distinctively the corporation office with the corporation name and the employment of a general agent so designated.

Not one of these cases decides that where a corporation establishes an office in its own name in a foreign State, puts it in charge of a general agent, and maintains there a corps of employees paid by the corporation, it is not doing business within such State.

It is submitted, therefore, that the ruling of the court below cannot be supported for either of the reasons stated in the opinion. It remains only to notice one other argument made for defendant in the court below.

It was contended that "soliciting" business was not "doing" business, and that where a corporation merely sent agents into a foreign State to solicit the inhabitants thereof to go to the State where the corporation was located and there do business with the corporation, it could not be said to be doing business in the State where the soliciting was carried on.

In support of this the defendant cited a number of cases.

It is not necessary to discuss the question whether these cases were all correctly decided on their facts, nor even whether the rule which defendant claims to be established by them, that the "soliciting" of business is not the "doing" of business, is correct.

If such question were material, it would be submitted with great confidence that no general rule can be laid down separating "soliciting" from other business, and that if a corporation opened an office, established therein a permanent force of employees, and put all in charge of a general agent, it would be found for purposes of service in that jurisdiction, even though the branch of business there carried on was a "soliciting" business.

This question, however, is not material here, and it is sufficient to point out that, in the present case, the defendant corporation went far beyond the mere soliciting of persons to go to the home State of the corporation and do business with it there. So far from confining itself to such solicitation, it opened an office in Pennsylvania and announced that this was its office where persons might come to do business with it, and at that office it transacted business with such persons as came there and made contracts with them through an agent specifically designated as a general passenger and freight agent.

When such advertised general agent wrote to R. L. Gardiner the letter found on page 24 of the Record and said:—

> "We can furnish you with a ticket or an order for "ticket at this office reading from Chicago to "Denver,"

he did more than solicit—he assumed to be able to act. He did not say go to Chicago and do business there with the company, or make an application and let me forward it to Chicago. He said come to the office of the company at Philadelphia, and there pay your money and receive a ticket or order. And if afterwards in accordance with his testimony (Record, page 10) he had taken Mr. Gardiner's money and handed him a prepaid order for a ticket, he would have made a contract which was binding on the company and which would have given Gardiner a right to sue, if the prepaid order had not been honored on presentation at Chicago. This was not solicitation, but representation.

The same may be said of the issuing of the so-called "bills of lading." The general agent of the corporation at its office in Philadelphia did not solicit shippers to go to Chicago and there transact business, nor did he simply ask for an application from them which he would forward to Chicago. On the contrary he asked them to come to the Philadelphia office, and there he received from them a surrender of their bills of lading over the initial lines, and gave them in return a contract binding on the cor-

poration by which it undertook to receive and carry the goods upon their arrival at the point of junction with the corporation's lines. The very object of establishing an office in Pennsylvania, and making a final contract there, was to capture the shipper in Philadelphia, so that he should surrender there his original bill of lading and be there bound to shipment over the company's lines. He could not afterwards be lured away by rival lines, but in order to accomplish this, the company was also bound to receive and transport the goods.

Conceding, as it must be conceded, that under the decisions of this court a corporation if it does continuously and substantially engage in business in a State foreign to its incorporation, is liable to suit there, it is submitted that the facts of the present case show that it is within the rule and that the jurisdiction should have been sustained. It is submitted that to hold otherwise would be to allow a foreign corporation to locate itself within a jurisdiction for the purposes of doing business therein with the citizens thereof and yet not be liable to suit by such citizens in that jurisdiction—a doctrine at once repugnant to natural justice and contrary to the repeated rulings of this court.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Plaintiff in Error.

FILE COPY.

No. 435. October Term, 1906.

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IN THE

Supreme Court of the United States.

ROBERT M. GREEN,

Plaintiff in Error,

v.

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,

Defendant in Error.

In Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

Brief for Defendant in Error.

FRANCIS RAWLE,
For Defendant in Error.

International, 236 Chestnut Street

IN THE

Supreme Court of the United States.

October Term, 1906. No. 435.

ROBERT M. GREEN,

Plaintiff in Error.

v.

CHICAGO BURLINGTON AND QUINCY RAILWAY CO.,

Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR DEFENDANT IN ERROR.

This is an action of tort to recover damages for injuries suffered by the plaintiff in error through the alleged negligence of the defendant in error. The injuries were received in a railway accident on the defendant's railroad in Colorado. The plaintiff in error is a citizen of Pennsylvania and a resident of the Eastern District thereof. The defendant in error is an Iowa corporation operating lines of railroad only west of Chicago and St. Louis.*

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* In an earlier case between these same parties, a rule to vacate the service was granted on the affidavit of Mr. Heller. Depositions were taken for the rule, as the local practice is. Counsel stipulated that Mr. Heller's affidavit should stand as his examination in chief (Record p. 7, at foot of page). His affidavit (Record, p.

This record involves the very important question as to whether or not the great interstate railway companies can be sued in the Federal courts in substantially every Federal district. All these companies solicit business through agents in the large cities and trade centres in practically the same manner as is disclosed by this Record. Is this doing business, and does this subject them to the Federal jurisdiction in every district where they maintain such agencies?

The sole question involved is:

Was the defendant, the Chicago, Burlington and Quincy Railway Company, "doing business" in Pennsylvania?

We submit that the question must be answered in the negative.

THE FACTS.

The defendant does not operate a railroad in Pennsylvania nor maintain there a ticket office, nor sell tickets, nor receive freight nor issue bills of lading for freight. All tickets for passage over its lines are sold by initial lines in Pennsylvania. All freight shipped from Pennsylvania and "routed" over the defendant's line is received and shipped and bills of lading issued therefor by the initial line.

The defendant maintains a "District Agent" in Philadelphia, whose duties cover several states and are defined by him to consist in endeavoring by advertisement, traveling and personal solicitation, in his territory, to induce shippers of goods and prospective travelers to arrange with

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14) and his cross and re-direct examination (Record, p. 7), with the exhibits constituted the evidence, in that case. That case was discontinued and the present action was brought. Thereupon counsel stipulated (Record, p. 7) that that evidence should become the evidence in this cause.

initial railway companies shipping their freight out of his territory or selling them tickets to the West, to route such freight and sell such tickets by the Chicago, Burlington & Quincy Railway from its points of junction at Chicago and west thereof with the initial lines operating in his said territory.

This agent's district or territory consists of half of Pennsylvania, a part of New Jersey and all of the Atlantic States south of Pennsylvania as far as North Carolina, and West Virginia.

The agent sells no regular passenger tickets and neither receives nor collects any money for freight. He has no authority to fix rates.

In a "few" instances and "as a mere incident," the agent has sold orders for reduced rate tickets to railroad *employees* who already have tickets over intermediate lines and are entitled to reduced rates over defendant's lines. This is done to enable the employees to be identified at the Western Office. Traveling west, they would have to surrender their initial line ticket on the train and would thus be without means of identification at the western point of junction. Sometimes the agent receives money for these orders; sometimes not.

In *certain* cases, "solely for the convenience of shippers" who have received a bill of lading from an initial line for goods "routed" over the defendant's line, the agent receives such bills of lading and gives the shipper a receipt therefor in the form of a bill of lading over defendant's line. This receipt expressly provides on its face that it *creates no obligation* in respect of the freight and that it will not be in force till the goods are received by the defendant company. This is done only "when shippers request the same as a convenience". This practice is testified to as being customary with all interstate or trunk lines.

If an intending traveler calls on the agent and decides to travel West from Chicago or St. Louis over defendant's

line, the agent sometimes receives his money and goes to the Pennsylvania Railroad Company or some other initial line and purchases his ticket for him. This is an *"occasional"* transaction (Record p. 10. XQ. 26). Apparently the customer pays the money before receiving his ticket.

There is evidence, not deemed to be important, that the agent's business is conducted with the usual accessories: Thus he has an office with the defendant's sign on it, and a telephone with the defendant's name in the telephone directory. Its name is in the Philadelphia Directory. A railroad folder and some advertising matter is in evidence naming this agent as the "District Freight and Passenger Agent" of the defendant at Philadelphia.

It is clear that the agent's real duties in Pennsylvania are soliciting freight and passengers and that anything else he does is occasional and incidental. Thus the agent, Mr. Heller, says (Record p. 15):

> "My duties as an employee of the defendant Railway Company, consist in endeavoring, by advertisement, traveling and personal solicitation, in my said territory, to induce prospective travelers and shippers of goods to arrange with initial railroad companies shipping their freight out of my territory or selling them tickets to the West, to route such freight and sell such tickets by the Chicago, Burlington & Quincy Railway from its points of junction at Chicago, and west thereof with the said initial lines operating in my said territory."

Again, referring to the work done by Mr. Heller's assistants, Wheeler, Traveling Passenger Agent, and Cloud, Traveling Freight Agent, Mr. Heller testified (Record pp. 9, 12):

> XQ. 18. And the Traveling Passenger Agent, R. E. Wheeler, and the Traveling Freight Agent, B. C. Cloud, report to you at your office?
>
> "A. Yes, sir.

"XQ. 19. What are their duties?

"A. Their duties are to solicit passenger business, that is, the passenger agent, and the traveling freight agent solicits freight for the Burlington Route.

"RDQ. 45. When you mentioned the work done by Messrs. Wheeler and Cloud, did you mean that the work they do is the work which they do for you and is of the kind referred to in the affidavit in this case?

"A. Yes, sir; the kind I do myself.

"RDQ. 46. And nothing else?

"A. No, sir."

That the issuing of orders for tickets for railroad employees at reduced rates is infrequent, appears from Mr. Heller's testimony at page 14 of the Record, where he says:

"I have sold and I do sell a *few orders* for reduced rate tickets to railroad employees only" etc.

That the same is true of the issue by him of receipts for bills of lading appears from his evidence at page 15 of the Record:

"In *certain cases,* solely for the *convenience of shippers* of through interstate freight so routed, the bills of lading issued by the initial railroad companies are surrendered to me, and in lieu thereof, I issue receipts therefor" etc.

The agent's transactions in regard to tickets for ordinary passengers are shown to be only "occasional". They are not, in fact, sales of tickets but rather the purchase of a ticket from an initial line with the money of the traveler, furnished at the moment. It would not be straining the term to say that in making such purchase, Mr. Heller acts as the agent of the traveler. This part of the evidence is covered by the following (Record p. 10, XQ. 26, 27):—

"XQ. 26. You do *occasionally,* however, I infer from your affidavit, sell tickets?

"A. Yes, sir; and in such cases the money is

turned over to the initial line. We do not sell any Burlington Route tickets.

"XQ. 27. That is to say, if I understand you correctly, if a man bought a ticket at your office which entitled him to transportation to your line and over your line, what you would do if you took his money at all, would be to take his money and send it to some initial carrier, like the Pennsylvania Railroad Company?

"A. Yes, sir; or we would collect the money and deliver the ticket. I will explain. In the Gardiner case I dictated that letter personally. If Mr. Gardiner had called at our office for a ticket from Chicago to Denver, we would have gone to the Pennsylvania Railroad Company or the Philadelphia & Reading and gotten what we call a prepaid order issued by that line, pay them the money for it and hand it to the passenger. He would have presented that order on arrival at Chicago and gotten a ticket from Chicago to Denver and return, or one way, as the case might be."

Whether Mr. Heller is a "General Agent" or is a "District Agent" is, we deem, a matter of no importance. The company in its advertisements, Exhibits "C" and "D" designates him as "District Freight and Passenger Agent". In speaking of himself as a "General Agent" (Record p. 9, XQ. 15, 16), he evidently had reference to the size of his district and not to his powers, the extent of which are shown by the evidence and are not to be inferred from his title. It is well known that what are called "General Agents" of a life insurance company are mere solicitors of insurance attached to a branch office or to the home office without any other powers or duties. They are "General" because their territory is *general.**

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*The cases which discuss the question as to whether an agent is *"General"* or not, are those which turn upon the question as to whether an Agent holds a position of sufficient dignity and importance to make him a proper

We submit that the evidence shows that the business transacted in Pennsylvania by this agency was really the soliciting of freight and passenger business and that anything else done by it was merely occasional and sporadic.

We believe it to be well settled that a foreign corporation may solicit business in a given state through agents without being considered as "doing business" in that state; and that such an agent may be a resident agent and not a mere traveling agent, and, of course, may have an office in the state for the transaction of his business. The plaintiff's contention is therefore narrowed down to an endeavor to show that the *occasional* transactions of this agent brought this defendant within the jurisdiction of the court.

That is the plaintiff's main contention and is necessarily so, but before the brief of the learned counsel for the plaintiff reaches this part of their argument, it takes up certain matters which may require attention.

It is there urged "that there are certain elements which, if one or more of them exist, are usually considered to indicate the carrying on of a business". One of these is said to be the establishment of a permanent office to which all persons having business with a corportion may come.

But there is no doubt that a soliciting agent of a foreign corporation may have a permanent office in a state without "doing business" in that state, and it adds nothing to the argument to characterize the office of the defendant's agent as "one to which all persons having business with the corporation may come". Those who came to Mr. Heller's office to transact business of the kind which he is shown to have transacted, came there properly; those who came there for any other purpose must have gone there fruitlessly. He maintained his office for the purposes of that office, which

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representative of his Company for purposes of service, assuming that his company has already been shown to be within the jurisdiction.

purposes are confined to those that have here been proved. Nothing is gained by saying that all persons could have gone to that office.

A second "element" mentioned by the learned counsel for the plaintiffs is:

> "The employment of an agent within a state who is *advertised* as a *General Agent* of a corporation for such business as it transacts in the state."

The gist of this "element" is the term "General Agent". Now, obviously that which brings a foreign corporation within the jurisdiction as "doing business", is the business which it transacts, which must be of a nature to bring the principal within that category. That the agent is advertised as a "General Agent" cannot enlarge his powers. The name is not important. The powers of the defendant's agent and what he does are, for the purposes of this case, defined by the Record. As a matter of fact, he is *not* advertised as a "General Agent" but as a "District Freight and Passenger Agent". (Record, pp. 25, 26.)*

The plaintiff nowhere contends that the mere soliciting of freight business, without more, would bring this defendant within the Federal jurisdiction for the service of process. This being so, neither having an office, nor having

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*It is clearly an error on the part of plaintiff's counsel to say as on page 8 of their Brief, that "if within that district any one wished to correspond with the corporation on freight or passenger busines they were informed by the advertisement that Mr. Heller was the *General Agent* of the Company". And, referring to the final statement of the same paragraph of their argument, can it be contended that having an agent and an office in Pennsylvania "to receive communications" is "doing business"?

that office on a prominent street, with its name displayed, and even with clerks and stenographers and its name in the city and telephone directories constitutes "doing business". These are mere accessories. The question is what business was done, and this part of the plaintiff's argument seems to lose force by dwelling too much on these accessories.

The plaintiff's brief then urges that because Mr. Heller was the head of a district with traveling men under him and in receipt of correspondence from various directions as to freight or passenger business, we are brought within the jurisdiction of the Federal courts, but we submit that this does not advance the argument because it may relate to the soliciting of freight and passenger business alone, which has been shown not to be "doing business".

Up to this point then there seems to be nothing in the plaintiff's contention that is inconsistent with a strictly *soliciting* business.

The plaintiff's argument then takes up what it calls the "inference to be drawn from the making of contracts" in Pennsylvania. The first of these is said to be "contracts for the transportation of ordinary passengers".

Now, in the first place, the learned counsel for the plaintiff has cited no case in which it has been held that even maintaining a ticket office and regularly selling tickets is "doing business". But we need not take that ground. It is enough to say that there is no sense in which the agent in this case sells tickets in Pennsylvania. He testifies that he does not (Record, p. 10-XQ. 26). The Gardiner letter was explained by Mr. Heller (Record, p. 10). He testified, in effect, that if Mr. Gardiner had called at his office he (Heller) *would have gone to an initial company* and bought (for Gardiner) what he called a prepaid order issued by the initial company, paid them

the money for it and handed it to him. But wherein does this prepaid order differ from an ordinary ticket which he could have bought from the initial Company; and why should not a passenger solicitor oblige a prospective traveled whom he had persuaded to use his western line by taking his money and going to an initial company and purchasing a through ticket for him? Obviously, the "contract" in this case would be the ticket bought from the initial company and not any contract made by the agent direct with the traveler.

Further, the evidence shows that these transactions were only "occasional" (Record, p. 10, XQ. 26). We submit therefore that as this agent could solicit freight and passenger business in Pennsylvania, he did not "do business" because of this class of occasional transactions.

As to the second class of transactions which the learned counsel for the plaintiff in error calls "contracts for transportation of railroad employees at reduced rates", this class of transactions relates to matters of mere railroad administration, dealings with their own employees or those of other companies. It is done in a "few" instances, (Record, p. 14) and only for a special purpose—the identification of a railroad employee at the place where he must be identified. It is "a mere incident". In "many such cases" (Record p. 14) Mr. Heller says the employee receives his order without paying for it. This is not "doing business" in Pennsylvania. The argument is, we submit, *de minimis*.

The third instance of alleged contracts made by the defendant's agent in Pennsylvania is said by the plaintiff to be "Contracts for the transportation of freight". It is hard to understand how this transaction can be considered a "contract". The goods have been shipped over an initial line and are on their way to the defendant's connecting point. The shipper brings his initial line bill of lading to

the defendant who receives it from him, giving him what in legal effect is nothing more than a *receipt.* It may in terms embody an offer to accept the goods when delivered at a connecting point, but this does not alone constitute a contract. There is no acceptance of the offer. It does not bind the shipper, because he could stop his goods in transit, and it does not bind the defendant to do anything more than it is bound as a common carrier to do, viz., to accept the shipper's goods when tendered to it and to carry them.

Besides, the contractual relation is specifically negatived by a clause in the receipt (Record p. 28):

> "It is expressly understood and agreed that this bill of lading is issued at the request of and for the convenience of the shipper, and that said freight has not yet been received by the Railway Company, and that no obligation in respect to said freight is assumed by this Railway Company, nor will this bill of lading be in force until said freight is received by this Railway Company."

By this instrument the defendant says to the shipper, I will give you this receipt. If you deliver your goods to me at a connecting point on my line, it will be a binding contract, and I will accept and carry them for you, but I assume no obligation hereby and this instrument is not in force until you do so.

We consider the case to fall within the principle of *Holder* v. *Aultman,* 169 U. S. 81, which held that a contract signed by a local agent in one state which expressly stipulated that it was not to be "valid" unless countersigned in Ohio, was not a contract in Michigan. True, the validity of the contract at bar did not depend upon any approval at Chicago, but equally with *Holder* v. *Aultman,* it depended upon a future contingency, viz., the receipt of the goods.

Such is the view that the defendant's counsel took of the nature of its agent's duties, powers and transactions in Pennsylvania by reason of which the plaintiff seeks to draw the defendant within the jurisdiction of this Court. Does it do so?

The plaintiff's counsel cite no opinion of this Court to sustain their position. Indeed, their entire brief on this part of their case contains but a single Federal authority. The question must therefore be considered here as a new question to be decided upon the weight of the argument on either side. The plaintiff urges that it would be unjust to him to have to go to Iowa to bring his suit, but he went to Denver to travel, and certainly it would be as great a hardship to the defendant to be obliged to come to Philadelphia to defend his case, with its evidence all in Colorado. At least the balance there is equal.

If we consider a shipper of freight from Philadelphia with a right of action against the carrier, wherein is his hardship in having to go to Colorado to try his case, greater than to bring the carrier within the jurisdiction of the Federal court in Philadelphia. Colorado is the place of performance of the contract, why should it not be the forum for the trial of the cause. Thus, the hardships at least balance each other. The most suitable place for trial is usually the place where the alleged cause of action arose, whether in the case at bar or in the case of a shipper whose goods have been lost or injured in Colorado in transit.

But there is another consideration and a more important one. It appears from this Record that the defendant company has like agents and transacts like business in substantially every Federal District. Would it be urged that it is thus brought within the jurisdiction of every Federal District. If there were twenty persons injured in the railroad accident in which the plaintiff suffered, there might be suits in seven different Federal Courts by reason of the business transacted by Mr. Heller alone. As the defendant

appears by this record to have like agents performing like duties in all parts of the country, it is open to be sued in every Federal District in actions of contract and actions of tort.

Again, it is well known that all the trunk lines maintain like agencies for the solicitation of business in all parts of the country. We see their signs on prominent business streets in Washington, Philadelphia, New York etc. It appears in this case that these business methods are prevalent. Mr. Heller says (Record, p. 15), referring to his issue of receipts for shippers of bills of lading:

> "This method is customary with all the leading interstate or trunk lines throughout the country."

Again, Mr. Heller says (Record, p. 10, Q. 28):

> "The Burlington Route could get along in this territory without any agency if all the other agencies were to be abolished. The business can be done by the initial lines.
>
> "XQ. 29. So that the object in maintaining an office here is to keep the share of business of the Burlington Route in competition with your competitors who also have agencies here?
>
> "A. Yes, sir."

It appears then that if the plaintiff is correct in his contention, all the principal interstate and trunk lines are within the jurisdiction of the Federal courts and may be sued in the various districts. This would be an intolerable burden to the courts: it would often lead to many suits where one would suffice to settle all questions of law and fact; it would inevitably end by driving the railroad companies from their present method of maintaining these convenient offices in large cities and thus cause great inconvenience to the public. This argument from "inconvenience" the plaintiff does not meet. It need not be further elaborated.

This is not an attempt on the part of the defendant to ask this court to limit any existing jurisdiction of the

Federal courts: we here ask that the jurisdiction be not too widely extended. It must be remembered (and it is so said by plaintiff's counsel in their Brief, p. 6) that the earlier rule was that a corporation could be sued only in the state under whose laws it was incorporated. For obvious reasons this doctrine has given way to the present doctrine that if a foreign corporation is actually "doing business" in a state, it comes within the jurisdiction of the Federal courts of that state, but shall the doctrine be extended?*

The plaintiff's counsel is asking that the doctrine of "doing business" be extended to cover occasional and incidental transactions, while entirely failing to consider or discuss the most important of all arguments, that from inconvenience; this they make no attempt to do. Their argument depends upon a single Federal case, *D. & R. G. Co.* v. *Roller Co.*, 100 Fed. Rep. 738, and a New York case, *Tuchband* v. *Chicago & A. R. Co.*, 115 N. Y. 437, of which latter they say only that it is "a somewhat similar case".

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*While recognizing modern tendencies, we may sometimes, when they are pushed too far, recall the older doctrines with advantage. Thus Judge Sharswood, in referring to a Pennsylvania statute which in certain cases permits service outside of the state, said in *Coleman's Appeal*, 75 Pa. 458:

> "*A construction which leads logically to such a result cannot be sound,* and would require that the legislature should have used language making their intention unquestionable. It would be to impute to the legislature *a disregard of the most important principle of all municipal law of Anglo-Saxon origin*, that a man shall only be liable to be called on to answer for civil wrongs *in the forum of his home,* and the tribunal of his vicinage, though his property may be subject to the jurisdiction of the Courts of the country where it may happen to be."

The case of *Denver & Rio Grande R. Co.* v. *Roller*, 100 Fed. Rep. 738, is the sole Federal case cited by the plaintiff's counsel as sustaining their main contention. It is not really a case in point. The language quoted in the opposing Brief decides only that a certain local agent of the defendant railroad company was "a managing business agent" upon whom lawful service could be made under the California Code. The question that arises in the case at bar, as to whether the defendant was "doing business" in California, was not discussed in the opinion of the Court.

In the only other case cited by them on the point now under consideration, *Tuchband* v. *Chicago & Alton R. R. Co.*, 115 N. Y. 127, the question did not really arise as to whether the defendant railway company was *"doing business"* in New York. It appeared there that the Code provided for service on a foreign Corporation *"if it has property within the state."* The Court of Appeals found that the defendant *had* "property within the state", and disposed of that question in these words:

> "It being conceded that the cause of action did not arise in this state, we are to inquire whether (1st) the corporation *has property* within this state. As to that there are positive averments in the plaintiff's papers, both general and specific—general that it has property within the state, and specific, pointing out office furniture, tickets and other articles in its office, and cars for transportation."

The quotation from the opinion found in the plaintiff's Brief relates entirely to another and a different question:—whether the agent served was a *"Managing Agent"*, in the language of the Code. It is therefore irrelevant as to the issue in the case before this court. It appeared also, in that case that the railway company had *tickets* in New York (they must have been for *sale*), and "cars for transportation," and that it carries on "an extensive business" in the state.

Against this meagre citation of cases we ask the attention of the Court to a long list of Federal and other cases, all or some of which were cited by defendant's counsel in the argument in the Court below and *none of which* except the Earle case are now adverted to by Plaintiff's Counsel in their argument in this Court.

A persuasive case is the carefully argued and well-considered case of *Earle* v. *Chesapeake & Ohio R. Co.*, 127 Fed. Rep. 235, decided in the Court which decided the present case below.

In that case, while the Railroad Company defendant did not maintain its own exclusive office in Pennsylvania, it did "maintain a freight soliciting agency in connection with other transportation companies." Three of its directors and its assistant secretary (upon whom the service was made) lived in Pennsylvania. The railroad company's freight and passenger cars were drawn, separately or as solid trains, by the Pennsylvania Railroad Company across the state from Washington to Jersey City. The defendant's dining cars were hauled through Pennsylvania by the Pennsylvania Railroad Company and defendant's cooks and waiters operated these cars during transit. Judge McPherson held that the defendant was not "doing business" in Pennsylvania and vacated the service that had been made on the assistant secretary. In so holding he said:

> "The transportation is not the defendant's act, and the fact that its cars continue to be used, *for the convenience of passengers and shippers,* after the state line has been reached, is unimportant. To hold otherwise would make many railroad companies suable in nearly every state in the Union, for it is well known that a freight car of any railroad may visit many states before it is finally returned to its owners. * * * The sale of tickets over defendant's railroad by the Pennsylvania Company in Philadelphia is only made in connection with the Pennsylvania Company's own tickets and is largely *for the convenience of travelers.* If this

constitutes the transaction of corporate business in a state, it is possible that every important railroad company in the United States may be sued in this district, and in many other districts as well."

The plaintiff's counsel cites the case of *Van Dresser* v. *Oregon Railway & Navigation Company*, 48 Fed Rep., 202, as being at variance with *Earle* v. *C. & O. R. Co.*, 127 Fed. Rep. 235. In the Van Dresser case, however, service on the Union Pacific was correctly upheld, for it, with several roads, among them the Oregon Short Line which operated in Oregon, the state where service was made, had formed a combination called "The Union Pacific System" and contracts were made and *freight received* in Oregon for transportation over this System. The Court very properly held that as *part of the system was operated* in Oregon and contracts were made there and other railroad business was transacted there for the whole of the System, all or any part of the System could be served with process there.

Maxwell v. *A. T. & S. F. R. Co.*, 34 Fed. Rep. 286.

This case holds that merely maintaining a soliciting freight and passenger agency in a state does not constitute "doing business."

Mr. Justice Brown said:

"The general rule appears now to be well settled that a foreign corporation may be sued within any jurisdiction wherein it carries on an *important part of its business.*"

Again:

"What is the character or amount of business which the corporation must do to subject its agent to the service of process within the foreign state, is left in some doubt by the authorities. If it have an office for the general transaction of its business—the sale of

its goods, if it be a manufacturing corporation; or the making of contracts, and the *receipt of freight and passengers for transportation*, if it be a railroad,—it would appear to be sufficient. *Hayden* v. *Mills*, 1 Fed. Rep. 93; *Railroad* v. *Harris*, 12 Wall. 65."

The opinion proceeds to the effect that while an agent of an insurance company *who receives premiums and issues policies* is doing business in the state, yet if the agent be a local one with authority only to receive applications and give receipts therefor, service on such agent is insufficient to bind the corporation.

Union Associated Press v. *Times-Starr Co.*, 84 Fed. Rep. 419.

Here Judge Lacombe held that a salaried agent of a non-resident newspaper corporation empowered to solicit advertisements, make contracts and receive payment therefor, and who carries on the business in an *office having the name of the newspaper on its windows*, is *not* a managing agent through whom the corporation may be served under the New York Code. In so holding the Court said:

"It is hardly to be supposed that congress intended the Federal Circuit Courts to exercise such comprehensive and far-reaching jurisdiction, except when a case coming strictly within the language of the statute is made out. * * * The question presented is *one of* grave importance. Probably there are but few newspapers in the United States which do not publish advertisements originating in this city, or which do not solicit such advertisements here. If this and the adjoining (southern) district are, for that reason, to be considered the proper forum for suits against the owners of such papers, wherever they may reside and conduct their business of publishing and circulating such papers, *it seems probable that our calendars may be seriously overburdened.*"

Fairbanks Co. v. *the Cincinnati, N. O. & T. P. R. R.*, 54 Fed. Rep. 420.

Here the facts were substantially identical with those in the case at bar. The case was heard before Mr. Justice Harlan and Gresham and Woods, JJ. Judge Gresham delivered the opinion of the Court concurred in by Mr. Justice Harlan; Judge Woods dissented. The principles of law involved were carefully considered and the case has been frequently cited by other Federal Courts and always with approval.

The action was brought in Illinois against a Railway Company incorporated in Ohio which operated a line of railroad in Ohio and Tennessee. Summons was served in Chicago upon a person who was employed by the defendant for the purpose of soliciting passengers and freight to move over railroads which had connections with the defendant's lines. On one of the windows of the office occupied by this solicitor appeared the *initials*[1] *of the defendant's name* in large letters, and in the room, over the railing and counter, opposite the initials of the company, appeared the names of persons designated respectively as "Northwestern Passenger Agent," "*General* Agent" and "Contracting Freight Agent."

The Court in affirming the judgment of the Court below quashing the service of process, said:

> "It had no property or officer, and no office for the transaction of business, in the state. The room occupied in part by the persons mentioned in the marshal's returns was not an office, and those persons were mere *solicitors of business*, and not officers or agents of the defendant, within the meaning of the statute."

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[1]In common parlance and common use, railroad companies are most frequently designated by the initials of their names.

Honeyman v. *Colorado Fuel & Iron Co.*, 133 Fed. Rep. 96.

A foreign corporation had an office in New York for the registration of stock transfers, and its directors held meetings there and kept a bank account there. It was held that this was *not* doing business in New York and service should be set aside.

Re Alabama & C. R. Co., Fed. Cas. 124.

In this case Woodruff, C. J., declined to adjudicate as a bankrupt in the Southern District of New York, a railroad company chartered under the laws of Alabama and other southern states. In so holding the Court said:

> "But the employment of means to secure or provide for these would, to him, be business; and, to a corporation, these exceptions can have no application. The conduct of any and all of the affairs of a corporation is business. Does, then, the doing of any acts whatever pertaining to the affairs of a railroad corporation constitute 'carrying on business,' in the sense of the act? Has the term, 'carrying on business', the same meaning as 'transacting any of its business'? If the necessities or interests of a railroad company require that an agent should be sent to a timber region to purchase or otherwise procure (*e. g.*, by cutting, sawing, &c.) materials for its superstructure, is that carrying on business there? If it send an agent or agents to a city, the centre of capital, to negotiate its bonds and raise money in aid of the construction of its road, and such agency be continued for that purpose, and for receiving subsequent remittances and making payments of interest or other indebtedness, at an office provided therefor, is that carrying on business in such city, within the meaning of the act? I am constrained, not only by the considerations already suggested, but by what, upon the words themselves, should be deemed their proper interpretation, to answer these questions in the negative. There are, in the carrying on of a business, many affairs which are *merely inci-*

dental, and which may be, and often are, transacted elsewhere than at the place where the business—that which is the real design and purpose or object in view—is located; and such transactions may be of such frequent, or even daily, occurrence as to require an agency of considerable duration. It would seem to me greatly unjust and unreasonable to regard such transactions as a carrying on of business, in the sense of the law. 'Carrying on business' looks to the scheme and purpose to which such transactions tend, and not to the incidental transactions themselves. Thus, the business of a railroad corporation is, by its charter, the construction, maintenance, and operation of a railroad. That is its business. In aid thereof, it may be necessary or expedient to employ agents and agencies—since it can only act by agents—in other places than those in which its business of constructing, maintaining, and operating the road can be done. But, the transactions of such agents are only collateral or incidental. They do not, in a just sense, constitute the business of the railroad company. That business cannot be removed. The company itself cannot transfer it. Agents, or officers who are agents, and only agents, may, from a distance, advise therein, give rules or directions to other agents for its management, but the *business of the railroad* company can only be done *where the railroad is,* or is to be, constructed, maintained, and operated."

Boardman v. *S. S. McClure Company,* 123 Fed. Rep. 614.

It appeared here that the McClure Company had a salaried employee at Chicago and maintained an office for him there. This office was advertised by the defendant as the "Western Office" of McClures and the agent designated himself on his letter heads and business card and on the window as the "Western Representative" of McClure's Magazine. His business was to travel through a certain territory and work up advertising business for the magazine. He quoted only fixed rates and his orders were subject to

approval by the home office. He made no definite contracts, but took orders and submitted them to the defendant. Collections were made at the home office. Service upon this agent was set aside.

Frawley et al. v. *Penna. Casualty Co.*, 124 Fed. Rep. 259.

To render service on a corporation made in a state other than that by which it was created, binding upon it in a personal action, the corporation must have been actually and *substantially* engaged in doing business in the state.

Lamb v. *Bowser*, Fed. Cas. 8,009, per Drummond, J.

Where an agent of a foreign insurance company, not authorized to make contracts for the company, but only to *receive money* or proposals or *premium notes* and forward them to his company for action, receives from a person in Indiana a proposal for insurance and a premium note and forwards them to his company, he is not "doing business" in Indiana.

Pennsylvania R. R. Co., v. *Rodgers*, 44 S. E. Rep. 300; 62 L. R. A. 178.

In this case the Court of Appeals of West Virginia held that where the defendant railroad company in connection with other lines maintained in West Virginia an agency for the solicitation of freight, this did not amount to a "doing of business" within the state. The Court in so holding said:

> "The Pennsylvania Railroad Company has not in any sense made itself a West Virginia corporation by contributing to this joint traffic arrangement, although it may in some sense—a limited sense—amount to a doing of business within the state. * * * It will not be regarded as being within the state otherwise than

transiently. It *operates no lines here, runs no cars here, and perform none of its business as a common carries within the state.*"

In *Strain* v. *Chicago Portrait Co.*, 126 Fed. Rep. 831, it was held that merely soliciting business in another jurisdiction was not sufficient to constitute "doing business" there.

In *Bradbury* v. *W. & W. M. & S. Co.*, 130 Ill. App. 600 (1903), the defendant corporation was organized under the laws of the State of Washington to engage in mining in that State and in any other place within the United States or Canada. The Court in its opinion said:

> "It is specifically charged that the defendant company maintained an office in Waukegan, Illinois, where the secretary and treasurer kept the books and accounts of the company and its stockholders, and that the principal officers of the company and a large number of the stockholders were residents of Lake County, Illinois, and a majority of the stockholders resided in this state; that the shares of stock were issued from the Waukegan office, and that frequent meetings of the board of directors had been held in the City of Waukegan, and that official notices relating to the business of the company were published in Waukegan, and on the stationery used Waukegan was designated as the 'main office'; that the company rented an office, bought furniture and a safe, and placed it in the office for the use of the secretary and treasurer."

Then, after citing with approval *Mandel* v. *Swan Land Co.*, 154 Ill. 177, which held that the term "doing business" in the State of Illinios *had reference to the business for which the company was organized,* the Court said:—

> "If the jurisdiction of the court could be held to depend on whether the corporation was doing business in this state, within the meaning of Section 26 of the corporation law, as construed in the Mandel case,

the facts alleged in this bill, aside from the general inference drawn therefrom, wholly fail to show that the company was doing business in this state. Opening an office in Waukegan and placing a safe and some office furniture therein for the convenience and use of the secretary and treasurer, where he *issued certificates of stock, kept the books* and the *holding of directors' meetings* there, together with the other acts charged to have been done in Lake County, *bear no resemblance to the powers and objects of this corporation,* as set forth in the articles of incorporation. There is no pretense that the company owned any mining properties in this state, or *that it was doing a mining or smelting business here.* All of its mining properties were in the State of Washington, and not in Illinios."

In *Rich* v. *C. B. & Q. Ry. Co.,* 74 *Pac. Rep.* 1008, (Supreme Court of the state of Washington), the defendant (the same defendant as in the case at bar) was sued in that state and service was made on the company through its passenger and freight solicitor who had an office in Seattle. It was held that the activities of this soliciting agent amounted to mere advertising on the part of the company, and did not constitue "doing business" in the state.

(The folder and the Official Guide in evidence in the case at bar (Record, pp. 25, 26), give the name of "M. P. Benton, Agent, 103, Pioneer Square, Seattle, Washington." Apparently these documents played a part in that case.)

To the same effect is the case of *Kite* v. *Pittsburgh, Cincinnati & Chicago Railway Co.,* in the County Court of Cook County, Illinois, in July, 1905 (reported in 38 Chi. Leg. News, p. 57).

The facts in that case were almost identical with those in the case at bar, including the giving of receipts in the form of bills of lading to the shippers in exchange for the bills of lading issued by the initial carriers. Carter, J., held that the Norfolk & Western Railroad was not "doing business in Illinois and could not be sued there".

People ex rel. Tower v. *Wells,* 98 App. Div. 83 (New York). Affirmed without an opinion in 182 N. Y. 553.

This was a Maine corporation, having a plant in Massachusetts. It had a salesroom in New York where it had $8,000 worth of goods. It had no bank account in New York, but all checks &c. were sent to Boston. The Agent or Manager of the New York department drew weekly drafts on Boston for expenses. Some of the money received in New York was kept in a safe and was used to pay running expenses. About one tenth of the goods in the New York store were sold in New York City. It was held not to be such a doing of business as to make it liable to taxation as a non-resident doing business in New York.

THE PENNSYLVANIA CASES.

In *Quarry Co.* v. *B. & N. Ry. Co.,* 204 Pa. 22, the Court, in referring to the Pennsylvania Act requiring the registration of all foreign corporations "doing business" in the state, said:

> "The purpose of the Act (of 1874) is to bring foreign corporations *doing business* within this state within the reach of legal process."

In *Mearshon* v. *Pottsville Lumber Co.,* 187 Pa. 12, it appeared that the plaintiff, a Michigan corporation, maintained a salesman and agent in Pennsylvania to take orders for goods and that the *contract* for the breach of which suit was brought, was made in Pennsylvania by this agent and by him sent to the foreign corporation, which performed the contract in Michigan. It was held that the plaintiff was not "doing business" in Pennsylvania within the intent of Act of 1874. The Court said:

> "Plaintiff is a corporation duly incorporated in the state of Michigan. *Its manufacturing operations*

> *are there conducted;* its capital is there invested. The *order for goods* in question was given to its salesman and agent in Pennsylvania and by him sent to the plaintiff who executed the order in Michigan. Under all the decisions this is *not* a doing of business in this state which makes it necessary to comply with the provisions of the act of 1874."

This case approved the case of *Blakeslee Mfg. Co.*, v. *Hilton,* 5 Pa. Super. Ct. 184, decided by an intermediate Appellate Court of Pennsylvania. In that case the Court said:

> "All that is here alleged is entirely consistent with the conduct of a foregn corporation, engaged in strictly interstate commerce. It may advertise its goods, *take orders, make contracts of sale respecting the same,* and ship them to customers in this state. It may also employ agents living in Pennsylvania to go from county to county, from town to town, and from person to person, *to secure orders."*

It was held that such acts did not constitute "doing business" in Pennsylvania.

In *Wolf Dryer Co.* v. *Bigler,* 192 Pa. 466, suit was brought upon a contract for the purchase of a brick drying machine. The plaintiff was a Michigan corporation which had sold the dryer to a resident in Pennsylvania through a salesman—the machine to be shipped into Pennsylvania. *Held* that the Michigan corporation was not doing business in Pennsylvania. Fell, J., in delivering the opinion of the Court, said:—

> "The fact that its agent came into this state and *made contracts* for machinery to be delivered here did not bring it within the inhibition of the act of 1874."

Building Association v. *Berlin,* 201 Pa. 1, was a case of a foreign building association loaning money to a resident

of Pennsylvania secured upon Pennsylvania real estate. The corporation maintained an agent in Pennsylvania, through whom applications for loans could be made to the home office in New York. It was held that it was not "doing business" in Pennsylvania. The Court said:—

> "The capital, if employed in the State of Pennsylvania, was so employed by a citizen of Pennsylvania, and not by the plaintiff corporation. In so far as the business of loaning money was concerned, it was carried on in the state of New York, and not in the state of Pennsylvania. If the operations of the plaintiff be measured by the test of agency, they will not be found, under the decision, to be in violation of the Act of 1874. The act of a foreign corporation in *selling goods here by agents,* and shipping the goods to purchasers, is *not* doing business in this State, within the prohibition of the act. The most that can be said of the plaintiff, is, that it had an agency at Bradford, by which its shareholders in that vicinity *were more conveniently enabled* to do business with the home office of the plaintiff corporation in New York."

We believe that this review of the Pennsylvania cases will suffice and that it is unnecessary to point out what we deem certain erroneous views in regard to them contained in plaintiff's Brief.

We submit that the judgment of the court below was correct and should be affirmed.

FRANCIS RAWLE,
For defendant in error.

Supreme Court of the United States.

No. 435.—October Term, 1906.

Robert M. Green, Plaintiff in Error, *vs.* Chicago, Burlington and Quincy Railway Company. } In error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

[April 29, 1907.]

Mr. Justice Moody delivered the opinion of the Court.

The plaintiff in error, a citizen of Pennsylvania, brought an action in the Circuit Court for the Eastern District of Pennsylvania to recover damages for personal injuries alleged to have been incurred in Colorado through the negligence of the defendant, against the defendant in error, a corporation created by the laws of the State of Iowa, and, therefore, for jurisdictional purposes, a citizen of that State. The return upon the writ shows a service "on Chicago, Burlington and Quincy Railway Company, a corporation which is doing business in the Eastern District of Pennsylvania . . . by giving a true and attested copy to Harry E. Heller, agent of said corporation." The defendant appeared specially for the purpose of disputing jurisdiction. The Circuit Court held that the service was insufficient, because the defendant was not doing business within the district, and that decision is brought here by writ of error for review.

The jurisdiction of the Circuit Court in this case was founded solely upon the fact that the parties were citizens of different States. In such a case the suit may be brought in the district of the residence of either. Act of March 3, 1875, chap. 137, § 1, as corrected by act of August 13, 1888, chap. 866, § 1, (25 Stat. 434.) But to obtain jurisdiction there must be service, and the service was upon the corporation in the Eastern District of Pennsylvania. Its validity depends upon whether the corporation was doing business in that district in such a manner and to such an extent as to warrant the inference that through its agents it was present there.

The eastern point of the defendant's line of railroad was at Chicago, whence its tracks extended westward. The business for which it was incorporated was the carriage of freight and passengers, and the construc-

tion, maintenance and operation of a railroad for that purpose. As incidental and collateral to that business it was proper, and, according to the business methods generally pursued, probably essential, that freight and passenger traffic should be solicited in other parts of the country than those through which the defendant's tracks ran. For the purpose of conducting this incidental business the defendant employed Mr. Heller, hired an office for him in Philadelphia, designated him as district freight and passenger agent, and in many ways advertised to the public these facts. The business of the agent was to solicit and procure passengers and freight to be transported over the defendant's line. For conducting this business several clerks and various travelling passenger and freight agents were employed, who reported to the agent and acted under his direction. He sold no tickets and received no payments for transportation of freight. When a prospective passenger desired a ticket, and applied to the agent for one, the agent took the applicant's money and procured from one of the railroads running west from Philadelphia a ticket for Chicago and a prepaid order, which gave to the applicant, upon his arrival at Chicago, the right to receive from the Chicago, Burlington and Quincy Railroad a ticket over that road. Occasionally he sold to railroad employes, who already had tickets over intermediate lines, orders for reduced rates over the defendant's lines. In some cases, for the convenience of shippers who had received bills of lading from the initial line for goods routed over the defendant's lines, he gave in exchange therefor bills of lading over the defendant's line. In these bills of lading it was recited that they should not be in force until the freight had been actually received by the defendant.

The question here is whether service upon the agent was sufficient, and one element of its sufficiency is whether the facts show that the defendant corporation was doing business within the district. It is obvious that the defendant was doing there a considerable business of a certain kind, although there was no carriage of freight or passengers. In support of his contention that the defendant was doing business within the district in such a sense that it was liable to service there, the plaintiff cites *Denver &c. Railroad Co.* v. *Roller*, 100 Fed. Rep. 738, and *Tuchband* v. *Chicago &c. Railroad*, 115 N. Y. 437. The facts in those cases were similar to those in the present case. But in both cases the action was brought in the State courts, and the question was of the interpretation of a State statute and the jurisdiction of the State courts.

The business shown in this case was in substance nothing more than that of solicitation. Without undertaking to formulate any general rule defining what transactions will constitute "doing business" in the sense

that liability to service is incurred, we think that this is not enough to bring the defendant within the district so that process can be served upon it. This view accords with several decisions in the lower Federal courts. *Maxwell* v. *Atchison &c. Railroad*, 34 Fed. Rep. 286; *Fairbank & Co.* v. *Cincinnati &c. Railroad*, 54 Fed. Rep. 420; *Union Associated Press* v. *Times Star Co.*, 84 Fed. Rep. 419; *Earle* v. *Chesapeake &c. Railroad*, 127 Fed. Rep. 235.

The judgment of the Circuit Court is

Affirmed.

True copy.

Test:

Clerk Supreme Court U. S.